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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2021-0458; Project Identifier MCAI-2021-00595-T; Amendment 39-21602; AD 2021-12-15]

RIN 2120-AA64

#### Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330-243, A330-243F, A330-341, A330-342, and A330-343 airplanes. This AD was prompted by a report of an in-flight turnback due to loss of green and blue hydraulic systems in cruise. This AD requires inspecting for discrepancies of the hydraulic pressure switch harnesses of affected engines, and applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD becomes effective June 25, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 25, 2021.

The FAA must receive comments on this AD by July 26, 2021.

**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 <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations,

M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0458.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0458; 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 AD, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3229; email [Vladimir.Ulyanov@faa.gov](mailto:Vladimir.Ulyanov@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021-0128, dated May 17, 2021 (EASA AD 2021-0128) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A330-243, A330-243F, A330-341, A330-342, and A330-343 airplanes.

This AD was prompted by a report of a Model A330 airplane equipped with Rolls-Royce Trent 700 engines that experienced an in-flight turnback due to loss of green and blue hydraulic systems

in cruise. On the green hydraulic system, electronic centralized aircraft monitoring (ECAM) warnings HYD G ENG 2 PUMP LO PR and G SYS LO PR were triggered, resulting in loss of the green hydraulic system. On the blue hydraulic system, ECAM warning HYD B ENG 1 PUMP LO PR was triggered, and the flightcrew selected the blue hydraulic system engine-driven pump (EDP) OFF, per flightcrew operating manual procedures. Subsequent inspections of engine #1 revealed that during a previous maintenance shop visit, and following partial re-routing of hydraulic harnesses, the blue and green EDP pressure switch electrical connectors (4001JG2-A and 4001JG1-A) were inadvertently cross connected. As a result, the blue hydraulic system was declared faulty (ECAM message) in flight, when actually the green hydraulic system had failed with low pressure. The FAA is issuing this AD to address the potential loss of two hydraulic systems (blue and green) in flight, instead of only one (green), which could lead to loss of all hydraulic circuits, possibly resulting in loss of control of the airplane. See the MCAI for additional background information.

#### Related Service Information Under 14 CFR Part 51

EASA AD 2021-0128 specifies procedures for a general visual inspection for discrepancies (including incorrect harness routing and pump pressure connections) of the hydraulic pressure switch harnesses of affected engines. EASA AD 2021-0128 also describes corrective actions including a visual inspection to identify the clip points where harnesses are not installed correctly, harness re-routing, and hydraulic system testing. 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 the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD

because the FAA evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Requirements of This AD**

This AD requires accomplishing the actions specified in EASA AD 2021–0128 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

**Explanation of Required Compliance Information**

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use certain civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2021–0128 is incorporated by reference in this AD. This AD, therefore, requires compliance with EASA AD 2021–0128 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0128 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 2021–0128. Service information specified in EASA AD 2021–0128 that is required for compliance with it is available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0458.

**Justification for Immediate Adoption and Determination of the Effective Date**

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment

procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because the loss of the blue and green hydraulic systems in flight could lead to loss of all hydraulic circuits, possibly resulting in loss of control of the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

**Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2021–0458; Project Identifier MCAI–2021–00595–T” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR

11.35, the FAA will post all comments received, without change, to <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email [Vladimir.Ulyanov@faa.gov](mailto:Vladimir.Ulyanov@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.

**Regulatory Flexibility Act (RFA)**

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

**Costs of Compliance**

The FAA estimates that this AD affects 56 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × \$85 per hour = \$255 .....	\$0	\$255	\$14,280

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

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

number of aircraft that might need these on-condition actions:

## ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
8 work-hours × \$85 per hour = \$680 .....	\$0	\$680

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

(2) Will not affect intrastate aviation in Alaska.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2021–12–15 Airbus SAS:** Amendment 39–21602; Docket No. FAA–2021–0458; Project Identifier MCAI–2021–00595–T.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective June 25, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Airbus SAS Model A330–243, A330–243F, A330–341, A330–342, and A330–343 airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 71, Powerplant.

**(e) Reason**

This AD was prompted by a report of an in-flight turnback due to loss of green and blue hydraulic systems in cruise. The FAA is issuing this AD to address the potential loss of the blue and green hydraulic systems in flight, which could lead to loss of all hydraulic circuits, possibly resulting in loss of control of the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0128, dated May 17, 2021 (EASA AD 2021–0128).

**(h) Exceptions to EASA AD 2021–0128**

(1) Where EASA AD 2021–0128 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2021–0128 specifies actions if "discrepancies are found," for this AD "discrepancies" include incorrect harness routing and pump pressure connections.

(3) The "Remarks" section of EASA AD 2021–0128 does not apply to this AD.

**(i) No Reporting Requirement**

Although the service information referenced in EASA AD 2021–0128 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* If any service information referenced in EASA AD 2021–0128 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, 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 instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

**(k) Related Information**

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

**(l) Material Incorporated by Reference**

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

(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 2021-0128, dated May 17, 2021.

(ii) [Reserved]

(3) For EASA AD 2021-0128, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADS@easa.europa.eu](mailto:ADS@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0458.

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

Issued on June 6, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021-12301 Filed 6-8-21; 4:15 pm]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2020-0881; Project Identifier 2018-CE-024-AD; Amendment 39-21578; AD 2021-11-16]

RIN 2120-AA64

#### Airworthiness Directives; Piper Aircraft, Inc. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 79-01-03, which applied to certain Piper Aircraft, Inc. (Piper) Model PA-36-285 airplanes, and AD 83-20-03, which applied to Piper Models PA-36-285, PA-36-300, and PA-36-375 airplanes. AD 79-01-03 required repetitive inspections of the spar carry through assembly until replaced with a different part numbered spar carry through assembly. AD 83-20-03 established life limits for the wing spar structural components. This AD retains the requirements in AD 79-01-

03 and AD 83-20-03 and requires the spar carry through assembly inspection from AD 79-01-03 for additional airplanes and adds life limits for certain wing structural components previously omitted from AD 83-20-03 for certain serial numbered airplanes. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 15, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 15, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 567-4361; website: <https://www.piper.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0881.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0881; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Dan McCully, Aviation Safety Engineer, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474-5548; fax: (404) 474-5606; email: [william.mccully@faa.gov](mailto:william.mccully@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 79-01-03, Amendment 39-3383 (44 FR 36, January 2, 1979), Docket No. 78-EA-69 (AD 79-01-03) and AD 83-20-03, Amendment 39-4739 (48 FR 45535, October 6, 1983), Docket No. 83-CE-23-AD (AD 83-20-03). AD 79-01-03 applied to certain Piper Model PA-36-285 airplanes and required repetitive inspections of spar carry through assembly part number

(P/N) 97370-00, with repair as necessary, until the spar carry through assembly is replaced with P/N 76824-02. AD 83-20-03 applied to Piper Models PA-36-285, PA-36-300, and PA-36-375 airplanes and established life limits for certain wing structural components.

The NPRM published in the **Federal Register** on March 23, 2021 (86 FR 15439). The NPRM was prompted by inconsistencies between the two ADs and the airplanes' type certificate. The FAA determined that the life limits for the spar carry through assembly, P/N 97370-00 or 76824-02, were inadvertently omitted from AD 83-20-03 for certain airplanes. In the NPRM, the FAA proposed to add the life limit for the spar carry through assembly for Models PA-36-285 and PA-36-300 airplanes, serial numbers 36-7660123 through 36-8160023; and Model PA-36-375 airplanes, serial numbers 36-7802001 through 36-8302025. The FAA also determined the repetitive inspections of the spar carry through assembly required by AD 79-01-03 should apply to both Model PA-36-285 and Model PA-36-300 airplanes until the life limit replacement of the spar carry through assembly with P/N 76824-02. In the NPRM, the FAA also proposed to require adding the repetitive inspections for the Model PA-36-300 airplanes. After the initial life limit replacement of the wing spar carry through assembly, P/N 97370-00 with P/N 76824-02, the repetitive inspections will no longer be required.

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

#### Discussion of Final Airworthiness Directive

##### Comments

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

##### Conclusion

The FAA reviewed the relevant data and determined that air safety requires adoption of the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

#### Related Service Information Under 14 CFR Part 51

The FAA reviewed Piper Service Bulletin No. 552A, dated August 3, 2018 (Piper SB No. 552A); Piper Aircraft PA-36, Pawnee Brave Kit 764-394, Right Wing Main Spar Caps Replacement, dated June 9, 2012 (Piper Kit 764-394); and Piper Aircraft PA-36, Pawnee Brave

Kit 764–393, Left Wing Main Spar Caps Replacement, dated June 9, 2012 (Piper Kit 764–393). Piper SB No. 552A applies to Models PA–36–285 and PA–36–300 airplanes and contains procedures for repetitively inspecting wing spar carry through assembly P/N 97370–00. Piper Kit 764–394 identifies the applicable parts and specifies procedures for replacing the right wing main spar caps, which includes the attachment bolts and wing carry through spar fittings and assembly. Piper Kit 764–393 identifies

the applicable parts and specifies procedures for replacing the left wing main spar caps, which includes the attachment bolts and wing carry through spar fittings and assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

**Other Related Service Information**

The FAA also reviewed Piper Aircraft Corporation Service Bulletin No. 552,

dated February 3, 1978 (Piper SB No. 552). Piper SB No. 552 contains the same procedures as Piper SB No. 552A, but Piper SB No. 552 only applies to Model PA–36–285 airplanes.

**Costs of Compliance**

The FAA estimates that this AD will affect 123 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of P/N 97370–00 wing spar carry through assembly.	8 work-hours × \$85 per hour = \$680 .....	Not applicable .....	\$680	\$83,640
Replacement of the wing attachment upper bolt and lower bolt.	10 work-hours × \$85 per hour = \$850 ...	\$1,310 (both bolts) .....	2,160	265,680
Replacement of wing carry through spar assembly*.	30 work-hours × \$85 per hour = \$2,550	\$23,467 .....	26,017	3,200,091
Replacement of Piper Kit 764–393 (Left) and Piper Kit 764–394 (Right)**.	20 work-hours × \$85 per hour = \$1,700	\$26,867 (both kits) .....	28,567	3,513,741

\* The wing carry through spar fitting, P/N 97713–03, is included in the wing carry through spar assembly, P/N 76824–02.

\*\* The replacement for the wing spar fitting P/N 97712–00 and the replacement for spar assembly P/Ns 97701–00 and 97701–01 are included in Piper Kit 764–393 and Piper Kit 764–394.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

- 1. The authority citation for part 39 continues to read as follows:  
**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

- 2. The FAA amends § 39.13 by:
  - a. Removing Airworthiness Directive 79–01–03, Amendment 39–3383 (44 FR 36, January 2, 1979), Docket No. 78–EA–69; and Airworthiness Directive 83–20–03, Amendment 39–4739 (48 FR 45535, October 6, 1983), Docket No. 83–CE–23–AD; and

- b. Adding the following new airworthiness directive:

**2021–11–16 Piper Aircraft, Inc.:**

Amendment 39–21578; Docket No. FAA–2020–0881; Project Identifier 2018–CE–024–AD.

**(a) Effective Date**

This airworthiness directive (AD) is effective July 15, 2021.

**(b) Affected ADs**

This AD replaces AD 79–01–03, Amendment 39–3383 (44 FR 36, January 2, 1979) (AD 79–01–03); and AD 83–20–03, Amendment 39–4739 (48 FR 45535, October 6, 1983) (AD 83–20–03).

**(c) Applicability**

This AD applies to Piper Aircraft, Inc. Models PA–36–285, PA–36–300, and PA–36–375 airplanes, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 5700, Wings.

**(e) Unsafe Condition**

This AD was prompted by a review of AD 83–20–03 and AD 79–01–03 and the determination that the requirements of those ADs did not address all of the affected airplanes. The FAA is issuing this AD to prevent fatigue damage to the wing structural components. The unsafe condition, if not addressed, could result in failure of the wing structure with consequent loss of control.



**(f) Compliance**

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

**(g) Inspection of the Wing Spar Carry Through Assembly**

(1) For Models PA-36-285 and PA-36-300 airplanes, serial numbers 36-7360001 through 36-7560003, with a wing spar carry through assembly part number (P/N) 97370-00 installed, before the airplane accumulates a total of 2,000 hours time-in-service (TIS) or within 25 hours TIS after the effective date of this AD, whichever occurs later, and

thereafter at intervals not to exceed 100 hours TIS, inspect the wing spar carry through assembly by following the Instructions, section 1, of Piper Service Bulletin No. 552A, dated August 3, 2018. (Piper SB No. 552A).

(2) If any damage is found during any inspection required by paragraph (g)(1) of this AD, before further flight, repair or replace the wing spar carry through assembly by following the Instructions, section 2, of Piper SB No. 552A.

(3) Replacing wing spar carry through assembly P/N 97370-00 with wing spar carry through assembly P/N 76824-02 terminates the repetitive inspections required by paragraph (g)(1) of this AD.

**(h) Life Limit Replacement of Wing Structural Components**

Remove from service the wing structural components specified in paragraphs (h)(1) through (8) of this AD before the part accumulates the life limit hours TIS set forth in table 1 to paragraph (h) of this AD. If, on the effective date of this AD, the component will reach its life limit within 100 hours TIS or has already reached its life limit, remove the part from service within 100 hours TIS after the effective date of this AD.

**BILLING CODE 4910-13-P**

Table 1 to paragraph (h)—*Compliance Times for Life Limit Replacement of Wing Components*

Airplanes	Type of Replacement	Paragraph of this AD					
		(h)(1)	(h)(4)	(h)(5)	(h)(6)	(h)(7)	(h)(8)
		(h)(2)					
		(h)(3)					
<b>Models PA-36-285 and PA-36-300</b>		<b>Life Limit Hours Time-in-Service on the Component</b>					
Serial Numbers (S/Ns) 36-7360001 through 36-7560003	Initial	4,100	4,100	N/A	N/A	3,100	2,000
	Repetitive	4,100	4,100	N/A	N/A	4,100	2,000
S/Ns 36-7560004 through 36-7560055	Initial	4,100	N/A	N/A	4,000	3,100	2,000
	Repetitive	4,100	N/A	N/A	4,100	4,100	2,000
S/Ns 36-7560056 through 36-7660122	Initial	4,100	N/A	4,100	4,000	N/A	2,000
	Repetitive	4,100	N/A	4,100	4,100	N/A	2,000
S/Ns 36-7660123 through 36-8160023	Initial	4,100	4,100	4,100	N/A	N/A	2,000
	Repetitive	4,100	4,100	4,100	N/A	N/A	2,000
<b>Model PA-36-375</b>		<b>Life Limit Hours Time-in-Service on the Component</b>					
		(h)(1)	(h)(4)	(h)(5)	(h)(6)	(h)(7)	(h)(8)
		(h)(2)					
		(h)(3)					
S/Ns 36-7802001 through 36-8302025	Initial	4,100	4,100	4,100	N/A	N/A	2,000
	Repetitive	4,100	4,100	4,100	N/A	N/A	2,000

**BILLING CODE 4910-13-C**

(1) Remove from service wing attachment upper bolt P/N 77245-00 and replace with an unused (zero hours TIS) wing attachment upper bolt P/N 77245-00.

(2) Remove from service any wing carry through spar fitting P/Ns 97713-00, 97713-02, or 97713-03 and replace with an unused

(zero hours TIS) wing carry through spar fitting P/N 97713-03.

**Note 1 to paragraph (h)(2):** Wing carry through spar fitting P/N 97713-03 is included as part of spar carry through assembly P/N 76824-02.

(3) Remove from service wing spar fitting P/N 97712-00 and replace with an unused

(zero hours TIS) wing spar fitting P/N 97712-00 by following steps D(1)(a) through D(1)(c) or section D(2), in Piper Aircraft PA-36, Pawnee Brave Kit 764-393, Left Wing Main Spar Caps Replacement, dated June 9, 2012 (Piper Kit 764-393), or Piper Aircraft PA-36, Pawnee Brave Kit 764-394, Right Wing Main

Spar Caps Replacement, dated June 9, 2012 (Piper Kit 764–394), as applicable.

**Note 2 to paragraphs (h)(3):** This note applies to paragraphs (h)(3) and (7) of this AD. Replacement parts for the left and right wing spar fittings P/N 97712–00 and the right, left, top, and bottom spar assemblies P/Ns 97701–00 and 97701–01 are included with Piper Kit 764–393 and Piper Kit 764–394.

(4) Remove from service spar carry through assembly P/N 97370–00 or 76824–02, as applicable, and replace with an unused (zero hours TIS) spar carry through assembly P/N 76824–02.

(5) Remove from service spar assembly P/Ns 97701–00 and 97701–01, Revision P or later revision, and replace with an unused (zero hours TIS) spar assembly by following the Instructions, sections B. and C., in Piper Kit 764–393 or Piper Kit 764–394, as applicable.

(6) Remove from service any spar carry through assembly P/N 76767–00 or P/N 76824–02 and replace with an unused (zero hours TIS) spar carry through assembly P/N 76824–02.

(7) Remove from service spar assemblies P/Ns 97701–00 and 97701–01, Revision N or earlier revision, and replace with an unused (zero hours TIS) left spar cap replacement kit P/N 764–393 and right spar cap replacement kit P/N 764–394 by following the Instructions, sections B. and C., in Piper Kit 764–393 or Piper Kit 764–394, as applicable.

(8) Remove from service wing attachment lower bolt P/N 77245–00 and replace with an unused (zero hours TIS) P/N 77245–00 bolt.

#### (i) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if you performed those actions before the effective date of this AD using Piper Aircraft Corporation Service Bulletin No. 552, dated February 3, 1978.

#### (j) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved for AD 79–01–03 and AD 83–20–03 are approved as AMOCs for the corresponding provisions of this AD.

#### (k) Related Information

For more information about this AD, contact Dan McCully, Aviation Safety Engineer, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5548; fax: (404) 474–5606; email: [william.mccully@faa.gov](mailto:william.mccully@faa.gov).

#### (l) Material Incorporated by Reference

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

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

(i) Piper Service Bulletin No. 552A, dated August 3, 2018;

(ii) Piper Aircraft PA–36, Pawnee Brave Kit 764–394, Right Wing Main Spar Caps Replacement, dated June 9, 2012; and

**Note 3 to paragraph (l)(2)(ii):** The Kit List and Sketch A for Piper Aircraft PA–36, Pawnee Brave Kit 764–394, Right Wing Main Spar Caps Replacement, dated June 9, 2012; and Piper Aircraft PA–36, Pawnee Brave Kit 764–393, Left Wing Main Spar Caps Replacement, dated June 9, 2012, were revised and dated June 9, 2012. The instructions and sketches in the rest of the documents were reformatted but retain the previous date of March 30, 1982, because the content of those pages was unchanged.

(iii) Piper Aircraft PA–36, Pawnee Brave Kit 764–393, Left Wing Main Spar Caps Replacement, dated June 9, 2012.

(3) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 567–4361; website: [www.piper.com](http://www.piper.com).

(4) You may view this service information at FAA, Policy and Innovation Division, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(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: [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 19, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021–12043 Filed 6–9–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA–2020–1183; Project Identifier 2019–SW–008–AD; Amendment 39–21565; AD 2021–11–03]**

**RIN 2120–AA64**

#### Airworthiness Directives; Airbus Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain

Airbus Helicopters Model EC 155B, EC155B1, SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, as identified in a European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD. This AD was prompted by a report of an in-flight loss of engine and main gearbox (MGB) cowlings. This AD requires inspecting the MGB fixed cowling front fitting (MGB front fitting), and depending on findings, corrective action. This AD also requires a new modification, which is a terminating action for the inspection, as specified in an EASA AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 15, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 15, 2021.

**ADDRESSES:** For EASA material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this material on the EASA website at <https://ad.easa.europa.eu>. For Airbus Helicopters service information, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–1183.

#### Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–1183; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

Blaine Williams, Aerospace Engineer, Los Angeles ACO Branch, Compliance & Airworthiness Division, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627-5371; email [blaine.williams@faa.gov](mailto:blaine.williams@faa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019-0008, dated January 22, 2019 (EASA AD 2019-0008) to correct an unsafe condition for certain Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale, Model EC 155 B, EC 155 B1, SA 365 N, SA 365 N1, AS 365 N2, and AS 365 N3 helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Model EC 155 B, EC155B1, SA-365N, SA-365N1, AS-365N2, and AS 365 N3 helicopters. The NPRM published in the **Federal Register** on March 5, 2021 (86 FR 12862). The NPRM was prompted by reports of an in-flight loss of engine and MGB cowlings. Subsequent investigations revealed that the MGB cowling attachment fittings failed because of mounting stress in the MGB front fitting and air intake bulkhead. The NPRM proposed to require inspecting and if necessary, replacing the MGB front fitting. The NPRM also proposed to require modifying the MGB front fitting, as specified in an EASA AD.

The FAA is issuing this AD to address failure of an MGB front fitting and subsequent detachment of the MGB or engine cowlings. See EASA AD 2019-0008 for additional background information.

**Discussion of Final Airworthiness Directive***Comments*

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

*Conclusion*

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed.

**Related Service Information Under 14 CFR Part 51**

EASA AD 2019-0008 requires inspecting the MGB front fittings within 110 flight hours after April 14, 2017 (the

effective date of EASA AD 2017-0055, dated March 31, 2017). If there is a discrepancy, the EASA AD requires applicable corrective action(s) before next flight. EASA AD 2019-0008 also requires modification of the MGB fixed cowling attachments within 660 flight hours or 23 months, whichever occurs first, after the effective date described in EASA AD 2019-0008. Accomplishing the modification constitutes a terminating action for the required inspection.

The FAA also reviewed Airbus Helicopters Alert Service Bulletin ASB No. EC365-53.00.62 and ASB No. EC155-53A038, each Revision 0 and dated December 20, 2018 (ASB AS365-53.00.62 and ASB EC155-53A038). ASB AS365-53.00.62 applies to Model AS365-series helicopters. ASB EC155-53A038 applies to Model EC155-series helicopters. This service information specifies replacing the front bracket, inspecting for stress of the MGB fixed cowlings on the radiator bulkhead, and installing an additional locking system.

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

**Costs of Compliance**

The FAA estimates that this AD affects 19 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Inspecting the MGB front fittings takes about 2 work-hours for an estimated cost of \$170 per helicopter and \$3,230 for the U.S. fleet. If required, replacing an MGB front fitting takes about 2 work-hours and parts cost about \$590 for an estimated total cost of \$760 per fitting. Other repairs will take up to 8 work-hours (excluding drying time) and parts will cost a minimal amount for an estimated cost of up to \$680 per helicopter.

Modifying the MGB fixed cowling attachments takes about 5 work-hours and parts cost about \$630 for an estimated cost of \$1,055 per helicopter and \$20,045 for the U.S. fleet.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2021-11-03 Airbus Helicopters:**

Amendment 39-21565; Docket No. FAA-2020-1183; Project Identifier 2019-SW-008-AD.

**(a) Effective Date**

This airworthiness directive (AD) is effective July 15, 2021.

**(b) Affected Airworthiness Directives (ADs)**

None.

**(c) Applicability**

This AD applies to Airbus Helicopters Model EC 155B, EC155B1, SA-365N, SA-365N1, AS-365N2, and AS 365 N3 helicopters, certificated in any category, as identified in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2019-0008, dated January 22, 2019 (EASA AD 2019-0008).

**(d) Subject**

Joint Aircraft System Component (JASC) Code: 7110, Engine Cowling System.

**(e) Reason**

This AD was prompted by a report of an in-flight loss of main gearbox (MGB) and engine cowlings. The FAA is issuing this AD to address a failure of the MGB fixed cowling front fitting, and subsequent MGB cowling or engine cowling detachment, which could result in damage to the helicopter, loss of helicopter control, and possible injury to persons on the ground.

**(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 2019-0008.

**(h) Exceptions to EASA AD 2019-0008**

(1) Where EASA AD 2019-0008 refers to April 14, 2017 (the effective date of EASA AD 2017-0055, dated March 31, 2017), this AD requires using the effective date of this AD.

(2) Where EASA AD 2019-0008 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD 2019-0008 refers to flight hours (FH), this AD requires using hours time-in-service.

(4) Where EASA AD 2019-0008 requires the modification within 660 flight hours or 23 months, whichever occurs first, this AD requires the modification within 660 hours time-in-service instead.

(5) Although the service information referenced in EASA AD 2019-0008 specifies to discard certain parts, this AD requires removing those parts from service instead.

(6) Where the service information referenced in EASA AD 2019-0008 specifies to use tooling, equivalent tooling may be used.

(7) The "Remarks" section of EASA AD 2019-0008 does not apply to this AD.

(8) Where paragraph (1) of EASA AD 2019-0008 states to, "inspect the MGB fixed cowling front fittings in accordance with the instructions of paragraph 1.E.2 of the applicable inspection ASB or in accordance with the instructions of the applicable modification ASB," this AD requires determining if Airbus Helicopters Alert Service Bulletin No. 53.00.55, Revision 0, dated March 13, 2017, or Revision 1, dated December 20, 2018, has or has not been

complied with and following the instructions, "For helicopters on which ALERT SERVICE BULLETIN No. 53.00.55 has not been complied with" or "For helicopters on which ALERT SERVICE BULLETIN No. 53.00.55 has been complied with," as applicable, in paragraph 1.E.2, of Airbus Helicopters Alert Service Bulletin ASB No. AS365-53.00.62 or ASB No. EC155-53A038, each Revision 0 and dated December 20, 2018 (ASB AS365-53.00.62 or ASB EC155-53A038), as applicable to your model helicopter.

(9) Where paragraph (2) of EASA AD 2019-0008 states to, "accomplish the applicable corrective action(s) in accordance with paragraph 1.E.2 of the applicable inspection ASB or in accordance with the instructions of the applicable modification ASB," this AD requires accomplishing the applicable corrective actions by following ASB AS365-53.00.62 or ASB EC155-53A038, as applicable to your model helicopter.

(10) Where paragraph 3.B.2.e.3 of the applicable modification ASB referenced in EASA AD 2019-0008 refers to paragraph 3.B.e.3, this AD requires referring to paragraph 3.B.3 of ASB AS365-53.00.62 or ASB EC155-53A038, as applicable to your model helicopter.

**(i) Special Flight Permit**

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

**(j) Alternative Methods of Compliance (AMOCs)**

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

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

**(k) Related Information**

For more information about this AD, contact Blaine Williams, Aerospace Engineer, Los Angeles ACO Branch, Compliance & Airworthiness Division, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627-5227; email [blaine.williams@faa.gov](mailto:blaine.williams@faa.gov).

**(l) Material Incorporated by Reference**

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

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

(i) European Aviation Safety Agency (EASA) AD 2019-0008, dated January 22, 2019.

(ii) Airbus Helicopters Alert Service Bulletin ASB No. AS365-53.00.62, Revision 0, dated December 20, 2018.

(iii) Airbus Helicopters Alert Service Bulletin ASB No. EC155-53A038, Revision 0, dated December 20, 2018.

(3) For EASA AD 2019-0008, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. For Airbus Helicopters service information, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1183.

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

Issued on May 11, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021-12037 Filed 6-9-21; 8:45 am]

**BILLING CODE 4910-13-P**

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

**[Docket No. FAA-2020-1074; Project Identifier MCAI-2020-01257-A; Amendment 39-21574; AD 2021-11-12]**

**RIN 2120-AA64**

**Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Model PC-24 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as the engine attachment hardware not

conforming to the approved design, which could affect the structural integrity of the airplane. This AD requires inspecting the engine attachment hardware for missing washers and loose nuts and taking corrective actions as necessary. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 15, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 15, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Pilatus Aircraft Ltd., CH-6371, Stans, Switzerland; phone: +41 848 24 7 365; email: [techsupport.ch@pilatus-aircraft.com](mailto:techsupport.ch@pilatus-aircraft.com); website: <https://www.pilatus-aircraft.com/>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1074.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1074; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329-4059; fax: (816) 329-4090; email: [doug.rudolph@faa.gov](mailto:doug.rudolph@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Pilatus Model PC-24 airplanes. The NPRM published in the **Federal Register** on March 26, 2021 (86 FR 16124). The NPRM was prompted by MCAI originated by the European Union Aviation Safety Agency (EASA), which

is the Technical Agent for the Member States of the European Union. EASA has issued EASA AD 2020-0194, dated September 8, 2020 (referred to after this as "the MCAI"), to address an unsafe condition on certain serial-numbered Pilatus Model PC-24 airplanes. The MCAI states:

During a scheduled maintenance inspection, the engine attachment hardware of a PC-24 airplane was found not to conform to the approved design. A washer was missing beneath each of the four mating bolt heads on the rear engine beam. In addition, some of the keeper fitting attachment bolts on the LH/RH middle inner nacelle were found with loose nuts. It was also determined that other aeroplanes may have the same non-conformities.

This condition, if not detected and corrected, could damage the engine attachment hardware, possibly affecting the structural integrity of the aeroplane.

To address this potential unsafe condition, Pilatus issued the [service bulletin] SB, providing instructions for inspection and corrective action.

For the reason described above, this [EASA] AD requires a one-time inspection for missing washers and loose nuts on the engine attachment hardware and, depending on findings, the accomplishment of applicable corrective action(s).

You may examine the MCAI in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1074.

In the NPRM, the FAA proposed to require inspecting the engine attachment hardware for missing washers and loose nuts and taking corrective actions as necessary. The FAA is issuing this AD to address the unsafe condition on this product.

#### Discussion of Final Airworthiness Directive

##### Comments

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

##### Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

#### Related Service Information Under 1 CFR Part 51

The FAA reviewed Pilatus PC-24 Service Bulletin No. 71-001, dated June 30, 2020. This service information specifies procedures for inspecting the engine attachment hardware for loose nuts and missing washers and taking corrective actions depending on findings. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in

#### ADDRESSES.

#### Costs of Compliance

The FAA estimates that this AD affects 34 airplanes of U.S. registry.

The FAA estimates that it would take 2.5 work-hours to do the one-time inspections. The average labor rate is \$85 per work-hour.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators would be \$7,225 or \$212.50 per airplane.

The FAA also estimates that, as on-condition costs, installing missing washers, replacing bolts, and doing an eddy current inspection of the bolt holes would take 4.5 work-hours and require parts costing \$200 for a cost of \$582.50 per airplane. This estimate assumes replacing all of the rear engine beam attachment bolts and washers and doing an eddy current inspection of all the attachment bolt holes. If the bolt holes are found damaged during the eddy current inspection, the damage will vary considerably from airplane to airplane, and the FAA has no way of estimating a repair cost. In addition, the FAA has no way of determining the number of airplanes that might need these actions.

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

#### Authority for This Rulemaking

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

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

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

### Regulatory Findings

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

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

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

### List of Subjects in 14 CFR Part 39

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

### The Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

#### 2021–11–12 Pilatus Aircraft Ltd.:

Amendment 39–21574; Docket No. FAA–2020–1074; Project Identifier MCAI–2020–01257–A.

#### (a) Effective Date

This airworthiness directive (AD) is effective July 15, 2021.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–24 airplanes, serial numbers (S/Ns) 101 through 162, S/N 164, S/N 165, S/N 167, and S/N 168, certificated in any category.

#### (d) Subject

Joint Aircraft System Component (JASC) Code 7120, Engine Mount Section.

#### (e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as engine attachment hardware not conforming to the approved design. The FAA is issuing this AD to detect and address incorrectly installed attachment hardware in the engine and nacelle area. The unsafe condition, if not addressed, could result in damage to the engine attachment hardware, which may affect the structural integrity of the airplane.

#### (f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) and (2) of this AD at the next annual inspection after the effective date of this AD or within 11 months after the effective date of this AD, whichever occurs later.

(1) Inspect the left hand (LH) and right hand (RH) middle inner nacelles for loose nuts and correctly install any loose nut before further flight by following section 3.B(1) of the Accomplishment Instructions in Pilatus PC–24 Service Bulletin No. 71–001, dated June 30, 2020 (Pilatus SB 71–001).

(2) Inspect the LH and RH front and rear engine beams for missing washers by following section 3.B(2)(a) through (b) of the Accomplishment Instructions in Pilatus SB 71–001. If there are any missing washers, before further flight, do an eddy current inspection of the bolt holes for damage by following section 3.C of the Accomplishment Instructions in Pilatus SB 71–001. Where Pilatus SB 71–001 specifies obtaining repair instructions from Pilatus, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or the European Union Aviation Safety Agency (EASA); or Pilatus’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

#### (g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in Related Information.

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

#### (h) Related Information

(1) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106;

phone: (816) 329–4059; fax: (816) 329–4090; email: [doug.rudolph@faa.gov](mailto:doug.rudolph@faa.gov).

(2) Refer to EASA AD 2020–0194, dated September 8, 2020, for more information. You may examine the EASA AD at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–1074.

#### (i) Material Incorporated by Reference

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

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

(i) Pilatus PC–24 Service Bulletin No. 71–001, dated June 30, 2020.

(ii) [Reserved]

(3) For Pilatus Aircraft Ltd. service information identified in this AD, contact CH–6371, Stans, Switzerland; phone: +41 848 24 7 365; email: [techsupport.ch@pilatus-aircraft.com](mailto:techsupport.ch@pilatus-aircraft.com); website: <https://www.pilatus-aircraft.com/>.

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(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: [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 17, 2021.

#### Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–12044 Filed 6–9–21; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2020–0812; Project Identifier MCAI–2020–01317–A; Amendment 39–21561; AD 2021–10–28]  
RIN 2120–AA64

#### Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Pilatus Aircraft Ltd. (Pilatus) Model PC–24 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition

on an aviation product. The MCAI identifies the unsafe condition as the need to revise certain airworthiness limitations and certification maintenance instructions. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 15, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 15, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Pilatus Aircraft Ltd., Customer Support General Aviation, CH-6371 Stans, Switzerland; phone: +41 848 24 7 365; email: [techsupport.ch@pilatus-aircraft.com](mailto:techsupport.ch@pilatus-aircraft.com); website: <https://www.pilatus-aircraft.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0812; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329-4059; fax: (816) 329-4090; email: [doug.rudolph@faa.gov](mailto:doug.rudolph@faa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Pilatus Model PC-24 airplanes. The NPRM published in the **Federal Register** on March 11, 2021 (86 FR 13838). The NPRM was based on MCAI from the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2020-0202, dated September 22, 2020 (referred to after this as “the

MCAI”) to correct an unsafe condition for Pilatus Model PC-24 airplanes. The MCAI states:

The airworthiness limitations and certification maintenance instructions for Pilatus PC-24 aeroplanes, which are approved by EASA, are currently defined and published in Pilatus PC-24 AMM [Aircraft Maintenance Manual] Chapter 04-00-00. These instructions have been identified as mandatory for continued airworthiness.

Failure to accomplish these instructions could result in an unsafe condition.

Previously, EASA issued AD 2020-0074, [dated March 27, 2020,] requiring the actions described in the Pilatus PC-24 AMM Chapter 04-00-00, Document Number 02378 Issue 005 at Revision 14.

Since that AD was issued, Pilatus published the ALS [Airworthiness Limitations section, at Issue 005 Revision 19], which contains the following new and/or more restrictive tasks as specified in Mandatory Structural Inspection Items data module PC24-AA04-20-0000-00A-000A-A Issue 005 Revision 00:

—AL-27-00-025 and AL-27-00-026:

Control column sprocket gear assembly, and

—AL-27-00-027: Control wheel column assembly.

In addition, Airworthiness Limitations Description data module PC24-A-A04-00-0000-00A-040A-A Issue 008 Revision 00 includes:

—The new limit of validity following the completion of the Full Scale Fatigue Test, and

—Usage assumptions/conditions for operations on unpaved and grass runways.

EASA AD 2020-0074, dated March 27, 2020, required revising the Airworthiness Limitations section (ALS) to correct an error in the horizontal stabilizer primary trim system secondary power source operational test. The MCAI retains the requirements of EASA AD 2020-0074, dated March 27, 2020, which the MCAI supersedes, and requires the additional revisions discussed previously. You may examine the MCAI in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0812.

In the NPRM, the FAA proposed to require replacing the revised sections of the ALS described previously into the existing AMM or instructions for continued airworthiness. The FAA is issuing this AD to address the unsafe condition on these products.

#### Discussion of Final Airworthiness Directive

##### Comments

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

#### Conclusion

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

#### Related Service Information Under 1 CFR Part 51

The FAA reviewed Chapter 04, Airworthiness Limitations, Pilatus PC-24 Aircraft Maintenance Manual (PC-24 AMM) Report 02378, Issue 005, Revision 19, dated May 26, 2020. This service information contains the parent data module and the new limit of validity and updates the usage assumptions and conditions for operations on unpaved and grass runways. This document also contains the revised subsections with revised maintenance actions.

The FAA also reviewed Horizontal stabilizer primary trim system secondary power source—Operation test, data module PC24-A-E27-40-0000-01A-320A-A, dated September 25, 2019, from PC-24 AMM Report 02378, Issue 005, Revision 19, dated May 26, 2020. This service information contains revised procedures for task number AL-27-40-022 in the certification maintenance requirements.

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

#### Costs of Compliance

The FAA estimates that this AD will affect 42 products of U.S. registry. The FAA also estimates that it will take about 1 work-hour per product to comply with the requirements of this proposed AD. The average labor rate is \$85 per work-hour.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators will be \$3,570 or \$85 per product.

#### Authority for This Rulemaking

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



detail the scope of the Agency's authority.

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

### Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

### List of Subjects in 14 CFR Part 39

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

### The Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

#### 2021–10–28 Pilatus Aircraft Ltd.:

Amendment 39–21561; Docket No. FAA–2020–0812; Project Identifier MCAI–2020–01317–A.

#### (a) Effective Date

This airworthiness directive (AD) is effective July 15, 2021.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–24 airplanes, all serial numbers, certificated in any category.

#### (d) Subject

Joint Aircraft System Component (JASC) Code 2740: Stabilizer Control System.

#### (e) Reason

This AD was prompted by the need to revise the Airworthiness Limitations section (ALS) of the existing aircraft maintenance manual (AMM) to add new and more restrictive tasks for the control column sprocket gear assembly and control wheel column assembly, to address the new limit of validity and update the usage assumptions and conditions for operations on unpaved and grass runways, and to correct an error in the horizontal stabilizer primary trim system secondary power source operational test. The FAA is issuing this AD to prevent reduction in the structural integrity of the airframe and components, as well as an unrecognized failure of the manual pitch trim. These conditions, if not addressed, could result in loss of airplane control.

#### (f) Actions and Compliance

(1) Before further flight, unless already done, revise the ALS of the existing AMM or instructions for continued airworthiness (ICA) for your airplane by incorporating the following documents.

(i) Airworthiness Limitations, AMM data module PC24–A–A04–00–0000–00A–040A–A, Issue 008, Revision 00, dated May 26, 2020, from Chapter 04, Airworthiness Limitations, Pilatus PC–24 Aircraft Maintenance Manual (PC–24 AMM) Report 02378, Issue 005, Revision 19, dated May 26, 2020.

(ii) Mandatory structural inspection items, AMM data module PC24–A–A04–20–0000–00A–000A–A, Issue 005, Revision 00, dated May 26, 2020, from Chapter 04, Airworthiness Limitations, Pilatus PC–24 Aircraft Maintenance Manual (PC–24 AMM) Report 02378, Issue 005, Revision 19, dated May 26, 2020.

(iii) Certification maintenance requirements, AMM data module PC24–A–A04–30–0000–00A–000A–A, Issue 007, Revision 00, dated October 14, 2019, from Chapter 04, Airworthiness Limitations, Pilatus PC–24 Aircraft Maintenance Manual (PC–24 AMM) Report 02378, Issue 005, Revision 19, dated May 26, 2020.

(iv) Horizontal stabilizer primary trim system secondary power source—Operation test, AMM data module PC24–A–E27–40–0000–01A–320A–A, dated September 25, 2019, from PC–24 AMM Report 02378, Issue 005, Revision 19, dated May 26, 2020. Your ALS must require this procedure for task number AL–27–40–022 in the certification maintenance requirements.

**Note 1 to paragraph (f)(1) of this AD:** Pilatus PC–24 Aircraft Maintenance Manual,

Airworthiness Limitations, AMM data module PC24–A–A04–00–0000–00A–040A–A, Issue 008, Revision 00, dated May 26, 2020, is the parent data module for Chapter 04 of the PC–24 AMM and consists of four subsections (sub-data modules). The parent data module and four sub-data modules comprise the complete ALS of Chapter 04, Airworthiness Limitations, Pilatus PC–24 Aircraft Maintenance Manual (PC–24 AMM) Report 02378, Issue 005, Revision 19, dated May 26, 2020. Incorporating Pilatus PC–24 Aircraft Maintenance Manual, Airworthiness Limitations, AMM data module PC24–A–A04–00–0000–00A–040A–A, Issue 008 Revision 00, dated May 26, 2020, and all four subsections listed in Section 1 General, is acceptable, but not required, for compliance with this AD.

(2) As of the effective date of this AD, except as provided in paragraph (g) of this AD, no alternative replacement times, inspection intervals, or tasks may be approved for the affected parts.

(3) The actions required by paragraph (f)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4), and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

#### (g) 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. Send information to Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; fax: (816) 329–4090; email: [doug.rudolph@faa.gov](mailto:doug.rudolph@faa.gov). Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

#### (h) Related Information

Refer to European Union Aviation Safety Agency (EASA) AD 2020–0202, dated September 22, 2020, for more information. You may examine the EASA AD at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–0812.

#### (i) Material Incorporated by Reference

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

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

(i) Chapter 04, Airworthiness Limitations, Pilatus PC–24 Aircraft Maintenance Manual



(PC-24 AMM) Report 02378, Issue 005, Revision 19, dated May 26, 2020.

(ii) Horizontal stabilizer primary trim system secondary power source—Operation test, AMM data module PC24-A-E27-40-0000-01A-320A-A, dated September 25, 2019, from PC-24 AMM Report 02378, Issue 005, Revision 19, dated May 26, 2020.

(3) For Pilatus Aircraft Ltd. service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Support General Aviation, CH-6371 Stans, Switzerland; phone: +41 848 24 7 365; email: [techsupport.ch@pilatus-aircraft.com](mailto:techsupport.ch@pilatus-aircraft.com); website: <https://www.pilatus-aircraft.com>.

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

(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: [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 7, 2021.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021-12045 Filed 6-9-21; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2020-1175; Product Identifier 2018-SW-071-AD; Amendment 39-21563; AD 2021-11-01]

RIN 2120-AA64

#### Airworthiness Directives; Bell Textron Canada Limited Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2013-20-13 for certain Bell Helicopter Textron Canada Limited (now Bell Textron Canada Limited) (Bell) Model 206B and 206L helicopters. AD 2013-20-13 required installing a placard beneath the engine power dual tachometer and revising the Operating Limitations section of the existing Rotorcraft Flight Manual (RFM) for your helicopter. This AD was prompted by the engine manufacturer expanding the RPM (N2) steady-state operation avoidance range limits. This AD retains certain requirements of AD 2013-20-13, and

requires revising certain sections of the existing RFM for your helicopter and installing or replacing a placard. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 15, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 15, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437-2862 or (800) 363-8023; fax (450) 433-0272; or at <https://www.bellcustomer.com>. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. Service information that is incorporated by reference is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1175.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-1175; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the Transport Canada AD, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Michael Hughlett, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5889; email [Michael.Hughlett@faa.gov](mailto:Michael.Hughlett@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013-20-13, Amendment 39-17619 (78 FR 66252, November 5, 2013), (AD 2013-20-13). AD 2013-20-13 applied to Bell Model 206B helicopters, serial number (S/N) 004 through 4675, including helicopters converted from Model 206A; and Bell Model 206L helicopters, S/N 45001

through 45153, and 46601 through 46617. The NPRM published in the **Federal Register** on March 11, 2021 (86 FR 13828). The NPRM proposed to require, within 25 hours time-in-service (TIS), revising the Operating Limitations and the Normal Procedures sections of the existing RFM for your helicopter and installing or replacing a placard. The NPRM was prompted by a determination from the manufacturers that the steady-state operation avoidance range limits needed to be expanded, amendments to the RFM needed to be incorporated, and a new placard (decal) needed to be installed.

Transport Canada AD CF-2018-23, dated August 22, 2018 (AD CF-2018-23), issued by Transport Canada, which is the aviation authority for Canada, corrects an unsafe condition for Bell Model 206B series helicopters including those converted from Model 206A, S/Ns up to 4690, and model 206L series helicopters, S/Ns 45001 through 45153 and 46601 through 46617. Transport Canada advises that Rolls Royce has expanded the RPM (N2) steady-state operation avoidance range limits due to several failures of the third stage turbine wheel. According to Transport Canada, Rolls Royce determined that detrimental vibrations could occur within a particular range of turbine speeds, which may be a contributing factor to these failures. Bell has also amended the RFMs and the engine starting procedures for RPM (N2) and provided a new decal (placard) to inform pilots to avoid steady-state operations at those engine turbine speeds. This condition, if not addressed, could result in turbine failure, engine power loss, and subsequent loss of control of the helicopter.

Accordingly, Transport Canada AD CF-2018-23 requires incorporating the amended RFM power plant operating limitations and engine starting procedures for RPM (N2) steady-state operation and installing a new decal.

#### Discussion of Final Airworthiness Directive

##### Comments

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

##### Conclusion

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA reviewed

the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

#### Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information, which contains revised operating limitations and engine starting instructions:

- Section 1, Operating Limitations, page 1–2A, of Bell Model 206B RFM BHT–206B–FM–1, Revision B–54, dated May 30, 2018 (BHT–206B–FM–1).
- Section 2, Normal Procedures, page 2–8 of BHT–206B–FM–1.
- Section 1, Limitations, page 1–5, of Bell Model 206B3 RFM BHT–206B3–FM–1, Revision 17, dated May 30, 2018 (BHT–206B3–FM–1).
- Section 2, Normal Procedures, page 2–10 of BHT–206B3–FM–1.
- Section 1, Operating Limitations, page 1–4B, of Bell Model 206L RFM BHT–206L–FM–1, Revision 31, dated May 30, 2018 (BHT–206L–FM–1).
- Section 2, Normal Procedures, page 2–10 of BHT–206L–FM–1.

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

#### Other Related Service Information

The FAA reviewed Bell Alert Service Bulletin (ASB) 206–07–115, Revision D, for Model 206A and 206B helicopters, and ASB 206L–07–146, Revision C, for Model 206L helicopters, each dated July 9, 2018. This service information contains procedures for installing a decal (placard) on the instrument panel below the Nr/N2 RPM dual tachometer indicator and inserting the RFM changes into the RFM.

#### Differences Between This AD and the Transport Canada AD

The Transport Canada AD requires compliance within 30 calendar days, while this AD requires compliance within 25 hours TIS.

#### Costs of Compliance

The FAA estimates that this AD affects 934 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Amending the existing RFM for your helicopter takes about 0.5 work-hour, for an estimated cost of \$43 per helicopter and \$40,162 for the U.S. fleet.

Installing or replacing a placard takes about 0.2 work-hour and parts cost

about \$20, for a cost of \$37 per helicopter.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

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

#### List of Subjects in 14 CFR Part 39

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

#### The Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by:

- a. Removing Airworthiness Directive (AD) 2013–20–13, Amendment 39–17619 (78 FR 66252, November 5, 2013); and

- b. Adding the following new AD:

**2021–11–01 Bell Textron Canada Limited:**  
Amendment 39–21563; Docket No. FAA–2020–1175; Product Identifier 2018–SW–071–AD.

#### (a) Effective Date

This airworthiness directive (AD) is effective July 15, 2021.

#### (b) Affected ADs

This AD replaces AD 2013–20–13, Amendment 39–17619 (78 FR 66252, November 5, 2013).

#### (c) Applicability

This AD applies to the following Bell Textron Canada Limited (Bell) helicopters, certificated in any category:

(1) Bell Model 206B, serial number (S/N) 004 through 4690 inclusive, including helicopters converted from Model 206A; and

**Note 1 to paragraph (c)(1):** Helicopters with a 206B3 designation are Model 206B helicopters.

(2) Bell Model 206L, S/N 45001 through 45153 inclusive, and 46601 through 46617 inclusive.

#### (d) Subject

Joint Aircraft Service Component (JASC) Code: 7250, Turbine Section.

#### (e) Unsafe Condition

This AD defines the unsafe condition as a third stage turbine vibration. This condition could result in turbine failure, engine power loss, and subsequent loss of control of the helicopter.

#### (f) Compliance

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

#### (g) Required Actions

Within 25 hours time-in-service after the effective date of this AD:

(1) For Bell Model 206B helicopters:  
(i) Revise the existing Rotorcraft Flight Manual (RFM) for your helicopter by inserting Section 1, Operating Limitations, page 1–2A, of Bell Model 206B RFM BHT–206B–FM–1, Revision B–54, dated May 30, 2018 (BHT–206B–FM–1) or Section 1, Limitations, page 1–5, of Bell Model 206B3 RFM BHT–206B3–FM–1, Revision 17, dated May 30, 2018 (BHT–206B3–FM–1), as applicable to your helicopter. Inserting a different document with “Steady-state operation” information identical to page 1–2A of BHT–206B–FM–1 or page 1–5 of BHT–206B3–FM–1, as applicable to your helicopter, is acceptable for compliance with the requirements of this paragraph.

(ii) Revise the existing RFM for your helicopter by inserting Section 2, Normal Procedures, page 2–8 of BHT–206B–FM–1 or Section 2, Normal Procedures, page 2–10 of BHT–206B3–FM–1, as applicable to your helicopter. Inserting a different document with “Continuous Operation” information

identical to page 2–8 of BHT–206B–FM–1 or page 2–10 of BHT–206B3–FM–1, as applicable to your helicopter, is acceptable for compliance with the requirements of this paragraph.

(iii) Remove placard part number (P/N) 230–075–213–121, if installed.

(iv) Install placard P/N 230–075–213–129 or placard P/N 230–075–213–131 on the instrument panel directly below the dual tachometer.

(2) For Bell Model 206L helicopters:

(i) Revise the existing RFM for your helicopter by inserting Section 1, Operating Limitations, page 1–4B, of Bell Model 206L RFM BHT–206L–FM–1, Revision 31, dated May 30, 2018 (BHT–206L–FM–1). Inserting a different document with “Steady-state operation” information identical to page 1–4B of BHT–206L–FM–1 is acceptable for compliance with the requirements of this paragraph.

(ii) Revise the existing RFM for your helicopter by inserting Section 2, Normal Procedures, page 2–10 of BHT–206L–FM–1. Inserting a different document with “Continuous Operation” information identical to page 2–10 of BHT–206L–FM–1 is acceptable for compliance with the requirements of this paragraph.

(iii) Remove placard P/N 230–075–213–123, if installed.

(iv) Install placard P/N 230–075–213–129 or placard P/N 230–075–213–131 on the instrument panel below the dual tachometer.

#### (h) Alternative Methods of Compliance (AMOCs)

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

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

#### (i) Related Information

(1) For more information about this AD, contact Michael Hughlett, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5889; email [Michael.Hughlett@faa.gov](mailto:Michael.Hughlett@faa.gov).

(2) Bell Alert Service Bulletin (ASB) 206–07–115, Revision D, for Model 206A and 206B helicopters, and ASB 206L–07–146, Revision C, for Model 206L helicopters, each dated July 9, 2018, which are not incorporated by reference, contain additional information about the subject of this AD. This service information is available at the contact information specified in paragraphs (j)(3) and (4) of this AD.

(3) The subject of this AD is addressed in Transport Canada AD CF–2018–23, dated

August 22, 2018. You may view the Transport Canada AD on the internet at <https://www.regulations.gov> in Docket No. FAA–2020–1175.

#### (j) Material Incorporated by Reference

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

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

(i) Page 1–2A of Section 1, Operating Limitations, and page 2–8 of Section 2, Normal Procedures, of Bell Model 206B Rotorcraft Flight Manual (RFM) BHT–206B–FM–1, Revision B–54, dated May 30, 2018.

(ii) Page 1–5 of Section 1, Limitations, and page 2–10 of Section 2, Normal Procedures, of Bell Model 206B3 RFM BHT–206B3–FM–1, Revision 17, dated May 30, 2018.

(iii) Page 1–4B of Section 1, Operating Limitations, and page 2–10 of Section 2, Normal Procedures, of Bell Model 206L RFM BHT–206L–FM–1, Revision 31, dated May 30, 2018.

(3) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l’Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at <https://www.bellcustomer.com>.

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

(5) You may view this 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: [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 12, 2021.

#### Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–12040 Filed 6–9–21; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2020–1170; Project Identifier MCAI–2020–00720–R; Amendment 39–21575; AD 2021–11–13]

RIN 2120–AA64

#### Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Bell Textron Canada Limited (Bell) Model 429 helicopters. This AD requires inspecting certain serial-numbered Emergency Flotation System (EFS) inflation hoses and depending on the results of those inspections, marking certain parts or removing certain parts from service. This AD was prompted by a report that a float compartment on an EFS did not inflate. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 15, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of July 15, 2021.

**ADDRESSES:** For Safran Aerosystems Services service information identified in this final rule, contact Bell Textron Canada Limited, 12,800 Rue de l’Avenir, Mirabel, Quebec J7J1R4; telephone 450–437–2862 or 800–363–8023; fax 450–433–0272; or at <https://www.bellcustomer.com>. You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–1170.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2020–1170; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the Transport Canada AD, any service information that is incorporated by reference, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Matt Fuller, AD Program Manager, Operational Safety Branch, Airworthiness Products Section, General Aviation & Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email [matthew.fuller@faa.gov](mailto:matthew.fuller@faa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 by adding an AD that would apply to Bell Model 429 helicopters with a Bell EFS kit part number (P/N) 429-706-069-101/-103/-105/-121/-123/-125/-139/-141/-143/or -157 manufactured before July 2019, with a float supply hose manufactured before January 2014, installed, except for float supply hoses marked with “SB 025-69-21” above the external identification marking. The NPRM published in the **Federal Register** on March 23, 2021 (86 FR 15434). In the NPRM, the FAA proposed to require within 100 hours time-in-service (TIS), removing each EFS supply hose and inspecting each end (also referred to as fitting or banjo) of the EFS supply hose using a certain plastic cable tie, and depending on the results of those inspections, removing from service certain parts and replacing those parts with airworthy parts. The NPRM also proposed to require marking a green dot on the base of certain supply hoses and writing “SB 025-69-21” above the external identification marking of the EFS with indelible ink. Finally, the NPRM proposed to prohibit installing any EFS supply hose manufactured before January 2014 unless it has been inspected in accordance with the NPRM. The NPRM was prompted by Canadian AD CF-2020-21R1, issued August 19, 2020 (Transport Canada AD CF-2020-21R1), by Transport Canada, which is the aviation authority for Canada, to correct an unsafe condition for all serial-numbered Bell Model 429 helicopters. Transport Canada advises that during maintenance on an EFS, the third compartment of the left forward float did not inflate. Transport Canada also advises that an investigation determined the supply hose for the gas flow from the pressurized cylinder to the float compartment was blocked due to a manufacturing defect. Bell advised that similar supply hoses are installed on various EFS part numbers, which could be installed on different helicopter type designs. Transport Canada further advises that this condition, if not detected and corrected, could result in partial inflation of the EFS during an emergency landing on water, preventing a timely egress from the helicopter, and injury to helicopter occupants.

Accordingly, Transport Canada AD CF-2020-21R1 requires a one-time special detailed inspection of the affected system to verify that there is no blockage through the EFS supply hoses and replacement, as required, of the affected supply hoses. Transport Canada AD CF-2020-21R1 also renders any affected EFS supply hoses not eligible as

a replacement part on Bell Model 429 helicopters.

#### **Discussion of Final Airworthiness Directive**

##### *Comments*

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

##### *Conclusion*

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

#### **Related Service Information Under 1 CFR Part 51**

The FAA reviewed Safran Aerosystems Services Service Bulletin No. 025-69-21, Revision 00, dated March 23, 2020 (SB 025-69-21). SB 025-69-21 is attached to Bell Alert Service Bulletin No. 429-20-52, dated March 30, 2020 (ASB 429-20-52). SB 025-69-21 is incorporated by reference in this AD. ASB 429-20-52 is not incorporated by reference in this AD. SB 025-69-21 specifies, for certain EFSs manufactured before July 2019, and any float supply hose manufactured before January 2014, performing a special inspection to verify that there is no blockage through the float supply hoses of the EFS inflation system.

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

#### **Differences Between This AD and the Transport Canada AD**

The Transport Canada AD requires compliance within 600 hours air time or within the next 24-month inspection of the EFS, whichever occurs first, whereas this AD requires compliance within 100 hours TIS. The Transport Canada AD limits the applicability to certain EFS supply hoses listed in SB 025-69-21, whereas this AD applies to certain EFS supply hoses manufactured before January 2014 but excludes EFS supply hoses marked with “SB 025-69-21.”

#### **Costs of Compliance**

The FAA estimates that this AD affects 110 helicopters of U.S. Registry and that operators may incur the

following costs in order to comply with this AD. Labor costs are estimated at \$85 per work-hour.

Removing and inspecting each EFS supply hose will take about 0.75 work-hour, for an estimated cost of \$64 per hose.

Installing or replacing each EFS supply hose will take about 0.10 work-hour with a minimal parts cost, for an estimated cost of \$9 per hose.

Marking each EFS supply hose with a green dot and the applicable service bulletin number will take a minimal amount of time at a nominal cost.

According to Safran’s service information, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage by Safran; accordingly, all costs are included in this cost estimate.

#### **Authority for This Rulemaking**

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

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

#### **Regulatory Findings**

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

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

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

under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

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

### The Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2021-11-13 Bell Textron Canada Limited:**  
Amendment 39-21575; Docket No. FAA-2020-1170; Project Identifier MCAI-2020-00720-R.

#### (a) Applicability

This airworthiness directive (AD) applies to Bell Textron Canada Limited (Bell) Model 429 helicopters, certificated in any category, with a Bell Emergency Flotation System (EFS) kit part number (P/N) 429-706-069-101/-103/-105/-121/-123/-125/-139/-141/-143/or -157 manufactured before July 2019, with a float supply hose manufactured before January 2014, installed, except for float supply hoses marked with “SB 025-69-21” above the external identification marking.

#### (b) Unsafe Condition

This AD defines the unsafe condition as a blocked float supply hose installed on an EFS. This condition could result in partial inflation of an EFS float during an emergency landing on water and subsequently preventing a timely egress from the helicopter.

#### (c) Effective Date

This AD is effective July 15, 2021.

#### (d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

#### (e) Required Actions

(1) Within 100 hours time-in-service (TIS):

(i) Remove each EFS supply hose from the float and inspect each end of the EFS supply hose by inserting a plastic cable tie, 300 mm minimum × 5 mm maximum (11.811 in. minimum × .196 in. maximum), into the holes of the related fitting as shown in Figure 1 of Safran Aerosystems Services Service Bulletin No. 025-69-21, Revision 00, dated March 23, 2020 (SB 025-69-21).

**Note 1 to paragraph (e)(1)(i):** Each end of the supply hose may also be referred to as fitting or banjo.

(ii) If the cable tie does not pass through the hose, before further flight, remove the EFS supply hose from service and replace it with an airworthy part.

(iii) If the cable tie passes through the supply hose, mark a green dot with indelible ink on the base of the supply hose and write “SB 025-69-21” above the external identification marking of the EFS with indelible ink.

(2) As of the effective date of this AD, do not install an EFS supply hose manufactured before January 2014 on any helicopter unless the requirements in paragraph (e)(1) of this AD have been completed.

#### (f) Alternative Methods of Compliance (AMOCs)

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

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

#### (g) Related Information

(1) For more information about this AD, contact Matt Fuller, AD Program Manager, Operational Safety Branch, Airworthiness Products Section, General Aviation & Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817-222-5110; email [matthew.fuller@faa.gov](mailto:matthew.fuller@faa.gov).

(2) The subject of this AD is addressed in Transport Canada AD CF-2020-212R1, dated August 19, 2020. You may view the Transport Canada AD on the internet at <https://www.regulations.gov> in Docket No. FAA-2020-1170.

#### (h) Material Incorporated by Reference

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

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

(i) Safran Aerosystems Services Service Bulletin No. 025-69-21, Revision 00, dated March 23, 2020 (SB 025-69-21).

**Note 2 to paragraph (h)(2)(i):** SB 025-69-21 is attached to Bell Alert Service Bulletin No. 429-20-52, dated March 30, 2020, which is not incorporated by reference in this AD.

(ii) [Reserved]

(3) As the design approval holder for the product identified in paragraph (a) of this AD, contact Bell Textron Canada Limited for the Safran Aerosystems Services service information identified in this AD, at Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone 450-437-2862 or 800-363-8023; fax 450-

433-0272; or at <https://www.bellcustomer.com>.

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

(5) You may view this 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: [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 18, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021-12042 Filed 6-9-21; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2021-0187; Project Identifier AD-2020-01664-E; Amendment 39-21583; AD 2021-11-21]

RIN 2120-AA64

#### Airworthiness Directives; CFM International, S.A. Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain CFM International, S.A. (CFM) LEAP-1A model turbofan engines. This AD was prompted by a report of a manufacturing quality escape found during an inspection of a high-pressure turbine (HPT) case. This AD requires the removal from service of the affected HPT case. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective July 15, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 15, 2021.

**ADDRESSES:** For service information identified in this final rule, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432-3272; email: [aviation.fleet-support@ge.com](mailto:aviation.fleet-support@ge.com). You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District

Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238-7759. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0187.

**Examining the AD Docket**

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0187; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Christopher McGuire, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington MA 01803; phone: (781) 238-7120; fax: (781) 238-7199; email: [Chris.McGuire@faa.gov](mailto:Chris.McGuire@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain CFM LEAP-1A23, LEAP-1A24, LEAP-1A24E1, LEAP-1A26, LEAP-1A26CJ, LEAP-1A26E1, LEAP-1A29, LEAP-1A29CJ, LEAP-1A30, LEAP-1A32, LEAP-1A33, LEAP-1A33B2, and LEAP-1A35A model turbofan engines. The NPRM published in the **Federal Register** on March 23, 2021 (86 FR 15443). The NPRM was prompted by a report of a manufacturing quality escape found during an inspection of an HPT case. In the NPRM, the FAA proposed to require the removal from service of the affected HPT case. The FAA is issuing this AD to address the unsafe condition on these products.

**Discussion of Final Airworthiness Directive**

*Comments*

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

*Conclusion*

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed CFM Service Bulletin (SB) LEAP-1A-72-00-0421-01A-930A-D, Issue 001, dated October 22, 2020. This SB specifies procedures for replacing the affected HPT cases. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

**Costs of Compliance**

The FAA estimates that this AD affects 8 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace the HPT case .....	1 work-hour × \$85 per hour = \$85 .....	\$217,600	\$217,685	\$1,741,480

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on

the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2021-11-21 CFM International, S.A.:**  
Amendment 39-21583; Docket No. FAA-2021-0187; Project Identifier AD-2020-01664-E.

**(a) Effective Date**

This airworthiness directive (AD) is effective July 15, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to CFM International, S.A. (CFM) LEAP-1A23, LEAP-1A24, LEAP-1A24E1, LEAP-1A26, LEAP-1A26CJ, LEAP-1A26E1, LEAP-1A29, LEAP-1A29CJ, LEAP-1A30, LEAP-1A32, LEAP-1A33, LEAP-1A33B2, and LEAP-1A35A model turbofan engines, with a high-pressure turbine (HPT) case, part number (P/N) 2668M94G01, that

contains a stage 7 port, P/N 2614M30P01, with a port casting serial number (S/N) listed in Table 1 in Planning Information, Paragraph 3.A., of CFM Service Bulletin (SB) LEAP-1A-72-00-0421-01A-930A-D, Issue 001, dated October 22, 2020.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

**(e) Unsafe Condition**

This AD was prompted by a report of a manufacturing quality escape found during inspection of an HPT case. The FAA is issuing this AD to prevent failure of the HPT case. The unsafe condition, if not addressed, could result in failure of the HPT case, uncontained rotor release, damage to the engine, and damage to the airplane.

**(f) Compliance**

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

**(g) Required Actions**

Before the HPT case exceeds the cycles since new limit in Table 1, Planning Information, Paragraph 3.A., of CFM SB LEAP-1A-72-00-0421-01A-930A-D, Issue 001, dated October 22, 2020, or during the next piece part exposure, whichever occurs first after the effective date of this AD, remove the affected HPT case from service and replace with a part eligible for installation.

**(h) Definitions**

For the purpose of this AD:

(1) A part eligible for installation is an HPT case, P/N 2668M94G01, that contains a stage 7 port, P/N 2614M30P01, with an S/N that is not listed in Table 1 in Planning Information, Paragraph 3.A., of CFM SB LEAP-1A-72-00-0421-01A-930A-D, Issue 001, dated October 22, 2020.

(2) Piece-part exposure is when the HPT case is removed from the engine and fully disassembled.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. You may email your request to: [ANE-AD-AMOC@faa.gov](mailto:ANE-AD-AMOC@faa.gov).

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

**(j) Related Information**

For more information about this AD, contact Christopher McGuire, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7120; fax: (781) 238-7199; email: [Chris.McGuire@faa.gov](mailto:Chris.McGuire@faa.gov).

**(k) Material Incorporated by Reference**

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

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

(i) CFM Service Bulletin LEAP-1A-72-00-0421-01A-930A-D, Issue 001, dated October 22, 2020.

(ii) [Reserved]

(3) For CFM service information identified in this AD, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432-3272; email: [aviation.fleetsupport@ge.com](mailto:aviation.fleetsupport@ge.com).

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238-7759.

(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: [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov), or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued on May 21, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021-12137 Filed 6-9-21; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1308**

**[Docket No. DEA-715]**

**Schedules of Controlled Substances: Placement of Oliceridine in Schedule II**

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, with a change as mentioned below, an interim final rule with request for comments published in the **Federal Register** on October 30, 2020, placing oliceridine, *N*-[(3-methoxythiophen-2-yl)methyl]({2-[(9*R*)-9-(pyridin-2-yl)-6-oxaspiro[4.5]decan-9-yl]ethyl})amine fumarate, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible, in schedule II of the Controlled Substances Act. In response to an error in the chemical name of oliceridine as noted by one of the commenters to the interim final rule, the Drug Enforcement

Administration makes a correction to the above mentioned chemical name of oliceridine by removing the word “fumarate” to read as *N*-[(3-methoxythiophen-2-yl)methyl]({2-[(9*R*)-9-(pyridin-2-yl)-6-oxaspiro[4.5]decan-9-yl]ethyl})amine. This change clarifies the control of oliceridine free base and its salts, to include the fumarate salt, by definition.

**DATES:** Effective July 12, 2021.

**FOR FURTHER INFORMATION CONTACT:** Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

**SUPPLEMENTARY INFORMATION:**

**Background and Legal Authority**

On October 30, 2020, the Drug Enforcement Administration (DEA), pursuant to 21 U.S.C. 811(j), published an interim final rule (IFR) to place oliceridine (including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible), a medication approved recently by the Food and Drug Administration (FDA) for medical use as an intravenous drug for the management of acute pain severe enough to require an intravenous opioid analgesic and for patients for whom alternative treatments are inadequate, in schedule II of the Controlled Substances Act (CSA). 85 FR 68749. The IFR provided an opportunity for interested persons to submit comments, as well as file a request for hearing or waiver of hearing, on or before November 30, 2020. DEA received three comments and did not receive any requests for hearing or waiver of hearing.

**Comments Received**

In response to the IFR, DEA received three comments. The submissions were from individuals or anonymous commenters. One commenter suggested that oliceridine be placed in schedule III rather than schedule II, one commenter had a statement on the controlled name, and the third commenter discussed another substance entirely that was unrelated to oliceridine. As such, the third comment was outside the scope of this current scheduling action.

*Comment:* One commenter suggested that oliceridine be placed in schedule III of the CSA, rather than schedule II. The commenter mentioned that placement of oliceridine in schedule II will limit its medical applications and limit access to the drug due to schedule II manufacturing quotas. The commenter stated that oliceridine has the potential



to revolutionize gastrointestinal endoscopy because it does not cause respiratory depression. Lastly, the commenter stated that since oliceridine is not indicated for home-use, abuse of the medication by drug users would be difficult.

**DEA Response:** DEA notes that FDA approved a New Drug Application (NDA) for oliceridine and provided DEA with a scheduling recommendation for oliceridine. The scheduling recommendation by Health and Human Services (HHS) and their notification to DEA regarding the FDA approval of the NDA initiated the DEA review and scheduling action. As stated in the IFR, after careful consideration of data from preclinical and clinical studies, DEA concurred with the HHS recommendation that oliceridine has abuse potential comparable to other schedule II opioids and therefore supported—and continues to support through this final rule—placement of oliceridine in schedule II under the CSA. Contrary to the commenter's opinion about schedule II controls on a drug limiting its medical applications and access due to manufacturing quota requirements, DEA notes that currently several schedule II drugs (oxycodone, hydrocodone etc.) are extensively prescribed and used in medical practice.

**Comment:** One commenter stated that the chemical name provided in the interim final rule indicates oliceridine is “N-[(3-methoxythiophen-2-yl)methyl]({2-[(9R)-9-(pyridin-2-yl)-6-oxaspiro[4.5]decan-9-yl]ethyl})amine fumarate”, though this is the name of the fumarate salt of oliceridine. The commenter noted that the other substances listed in 21 CFR 1308.12, and in most other sections of the CSA list only the base form of the drug, and control salts by definition. The commenter suggested to provide the chemical name for oliceridine base, and the fumarate salt would be controlled under the preamble in 12 CFR 1308.12.

**DEA Response:** DEA agrees with commenter regarding the error in the chemical name of oliceridine and corrects appropriately by removing the word “fumarate” to read oliceridine as, N-[(3-methoxythiophen-2-yl)methyl]({2-[(9R)-9-(pyridin-2-yl)-6-oxaspiro[4.5]decan-9-yl]ethyl})amine. The correction will make clear precisely which substance is being controlled because the fumarate salt was not the accurate designation for the controlled substance. The listing of the base form and removal of the salt designation is consistent with other controlled substance listings under the CFR and the substance designated for control remains unchanged. The base form

listing minus the salt designation (“fumarate”) is readily understood by those registered to handle the substance and would not be misunderstood by the public. For this reason, DEA believes the change will not have an impact.

Based on the rationale set forth in the interim final rule, DEA adopts the IFR, with the above mentioned correction to the chemical name of oliceridine.

#### Requirements for Handling Oliceridine

As indicated above, oliceridine has been a schedule II controlled substance by virtue of an IFR issued by DEA in October 2020. Thus, this final rule does not alter the regulatory requirements applicable to handlers of oliceridine that have been in place since that time. Nonetheless, for informational purposes, we restate here those requirements. Oliceridine is subject to the CSA's schedule II regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule II substances, including the following:

1. **Registration.** Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) oliceridine, or who desires to handle oliceridine, must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles or intends to handle oliceridine, and is not registered with DEA, must submit an application for registration and may not continue to handle oliceridine, unless DEA has approved the application for registration, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. These registration requirements, however, are not applicable to patients (end users) who possess oliceridine pursuant to a lawful prescription.

2. **Quota.** Only registered manufacturers are permitted to manufacture oliceridine in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

3. **Disposal of stocks.** Any person who does not desire or is not able to maintain a schedule II registration must surrender all quantities of currently held oliceridine, or may transfer all quantities of currently held oliceridine

to a person registered with DEA in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

4. **Security.** Oliceridine is subject to schedule II security requirements and must be handled and stored pursuant to 21 U.S.C. 821 and 823 and in accordance with 21 CFR 1301.71–1301.93. Non-practitioners handling oliceridine must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

5. **Labeling and Packaging.** All labels, labeling, and packaging for commercial containers of oliceridine must comply with 21 U.S.C. 825 and 958(e) and be in accordance with 21 CFR part 1302.

6. **Inventory.** Every DEA registrant who possesses any quantity of oliceridine must take an inventory of oliceridine on hand, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Any person who becomes registered with DEA to handle oliceridine must take an initial inventory of all stocks of controlled substances containing oliceridine on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including oliceridine) on hand every two years, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. **Records and Reports.** DEA registrants must maintain records and submit reports for oliceridine, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317.

8. **Orders for oliceridine.** Every DEA registrant who distributes oliceridine is required to comply with order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305.

9. **Prescriptions.** All prescriptions for oliceridine or products containing oliceridine must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

10. **Manufacturing and Distributing.** In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule II controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of oliceridine may only be for the



legitimate purposes consistent with the drug’s labeling, or for research activities authorized by the Federal Food, Drug, and Cosmetic Act, as applicable, and the CSA.

11. *Importation and Exportation.* All importation and exportation of oliceridine must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

12. *Liability.* Any activity involving oliceridine not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

**Regulatory Analyses**

*Administrative Procedure Act*

This final rule, with a correction in the chemical name of oliceridine as discussed above, affirms the amendment made by the IFR that is already in effect. Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) generally requires notice and comment for rulemaking. However, 21 U.S.C. 811(j) provides that in cases where a certain new drug is: (1) Approved by HHS and (2) HHS recommends control in CSA schedule II–V, DEA shall issue an IFR scheduling the drug within 90 days. Additionally, subsection (j) specifies that the rulemaking shall become immediately effective as an interim final rule without requiring DEA to demonstrate good cause. DEA issued an IFR on October 30, 2020, and solicited public comments on that rule. Subsection (j) further provides that after giving interested persons the opportunity to comment and to request a hearing, the Attorney General, as delegated to the Administrator of DEA, shall issue a final rule in accordance with the scheduling criteria of 21 U.S.C. 811(b) through (d) and 812(b). DEA is now responding to the comments submitted by the public and issuing the final rule, in conformity with the APA and the procedure required by 21 U.S.C. 811.

*Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)*

In accordance with 21 U.S.C. 811(a) and (j), this scheduling action is subject

to formal rulemaking procedures performed “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.)12866 and the principles reaffirmed in E.O. 13563.

*Executive Order 12988, Civil Justice Reform*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

*Executive Order 13132, Federalism*

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does 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.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

This rule does not have tribal implications warranting the application of E.O. 13175. It does not 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.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. Under 21 U.S.C. 811(j), DEA is not required to publish a general notice of proposed rulemaking. Consequently, the RFA does not apply.

*Unfunded Mandates Reform Act of 1995*

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995,

2 U.S.C. 1501 *et seq.*, DEA has determined that this action would not result in any Federal mandate that may result “in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year.” Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

*Paperwork Reduction Act of 1995*

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action does not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

*Congressional Review Act*

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this final rule to both Houses of Congress and to the Comptroller General.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 21 CFR part 1308, which published on October 30, 2020 (85 FR 68749), is adopted as a final rule with the following amendment:

**PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES**

■ 1. The authority citation for part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.12 by revising paragraph (c)(18) to read as follows:

**§ 1308.12 Schedule II.**

\* \* \* \* \*  
(c) \* \* \*

\* \* \* \* \*

**D. Christopher Evans,***Acting Administrator.*

[FR Doc. 2021-11981 Filed 6-9-21; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****21 CFR Part 1308**

[Docket No. DEA-479]

**Schedules of Controlled Substances: Placement of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA in Schedule I****AGENCY:** Drug Enforcement Administration, Department of Justice.**ACTION:** Final rule.

**SUMMARY:** By this rule, the Drug Enforcement Administration permanently places five synthetic cannabinoids, as identified in this final rule, in schedule I of the Controlled Substances Act. These five substances are currently listed in Schedule I pursuant to a temporary scheduling order. As a result of this rule, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle these five specified controlled substances will continue to apply.

**DATES:** Effective June 10, 2021.**FOR FURTHER INFORMATION CONTACT:**

Terrence L. Boos, Drug & Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

**SUPPLEMENTARY INFORMATION:** In this final rule, the Drug Enforcement Administration (DEA) is permanently scheduling the following five controlled substances in schedule I of the Controlled Substances Act (CSA), including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible:

- naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (other names: NM2201 or CBL2201),
- N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (other name: 5F-AB-PINACA),

- 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (other names: 4-CN-CUMYL-BUTINACA, 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA, or SGT-78),
- methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate (other names: MMB-CHMICA or AMB-CHMICA), and
- 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide (other name: 5F-CUMYL-P7AICA).

**Legal Authority**

The CSA provides that issuing, amending, or repealing of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS);<sup>1</sup> or (3) on the petition of any interested party. 21 U.S.C. 811(a). The Attorney General initiated this action on his own motion, as delegated to the Administrator of DEA, and is supported by, *inter alia*, a recommendation from the Assistant Secretary for Health of HHS (Assistant Secretary) and an evaluation of all relevant data by DEA. The regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles (manufactures, distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) or proposes to handle NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA will continue to apply as a result of this action.

**Background**

On July 10, 2018, DEA published an order in the **Federal Register** amending 21 CFR 1308.11(h) to temporarily place naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (other names: NM2201 or CBL2201); N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (other name: 5F-AB-PINACA); 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (other names: 4-CN-

CUMYL-BUTINACA, 4-cyano-CUMYL-BUTINACA, 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA or SGT-78); methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate (other names: MMB-CHMICA or AMB-CHMICA) and 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide (other name: 5F-CUMYL-P7AICA) in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 83 FR 31877. That temporary scheduling order took effect on the date of publication, and was based on findings by the former Acting Administrator of DEA that the temporary scheduling of these five synthetic cannabinoids (SCs) was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1).

On July 13, 2020, DEA published an order to extend the temporary scheduling of the five SCs by one year, until July 10, 2021. 85 FR 42296. Also, on that same date and in the same issue of the **Federal Register**, DEA published a notice of proposed rulemaking (NPRM) to permanently control the five SCs in schedule I of the CSA. 85 FR 42290. Specifically, DEA proposed to add these five SCs to the hallucinogenic substances list under 21 CFR 1308.11(d).

**DEA and HHS Eight Factor Analyses**

On May 29, 2020, HHS provided DEA with a scientific and medical evaluation and scheduling recommendation, prepared by the Food and Drug Administration (FDA), entitled "Basis for the Recommendation to Place Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate [NM2201; CBL2201], N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide [5F-AB-PINACA], 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA; SGT-78), methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate [MMB-CHMICA; AMB-CHMICA], and 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide [5F-CUMYL-P7AICA; CUMYL-5F-P7AICA; SGT-263] and Their Salts in Schedule I of the Controlled Substances Act."

After considering the eight factors in 21 U.S.C. 811(c), each substance's abuse potential, lack of legitimate medical use in the United States, and lack of accepted safety for use under medical supervision pursuant to 21 U.S.C.

<sup>1</sup> As set forth in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

812(b), the Assistant Secretary recommended that NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA be placed in schedule I of the CSA. In response, DEA conducted its own eight-factor analysis of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA.

The NPRM stated that the DEA and HHS analyses, as well as the Assistant Secretary's May 29, 2020, letter to DEA, were available for viewing on the electronic docket. However, DEA discovered that these documents were not posted to the electronic docket as stated, and were only available for viewing at DEA headquarters. Upon publication of this final rule, DEA will post these documents in their entirety in the public docket for this rule (Docket Number DEA-479) at <http://www.regulations.gov> under "Supporting Documents."

#### **NPRM To Schedule NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA**

On July 13, 2020, DEA published an NPRM entitled "Schedules of Controlled Substances: Placement of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA in Schedule I." 85 FR 42290. The NPRM provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations on or before August 12, 2020. No requests for such a hearing were received by DEA. The NPRM also provided an opportunity for interested persons to submit comments on the proposed rule on or before August 12, 2020.

#### **Comments Received**

DEA received two comments on the proposed rule to control NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA in schedule I of the CSA. However, neither comment was relevant to this specific rule. One commenter discussed an electronic database for use in pain clinics, while the second commenter focused on deaths resulting from COVID-19. Therefore, DEA has no responses to these comments.

As indicated above, this final rule applies to five SCs that were the subject of a July 10, 2018 temporary scheduling order and the July 13, 2020 NPRM. These five substances will now be listed in 21 CFR 1308.11(d), as specified below.

#### **Scheduling Conclusion**

After considering the scientific and medical evaluations and accompanying recommendation of HHS, and conducting an independent eight-factor analysis, DEA finds substantial evidence of abuse potential for NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA. DEA is therefore permanently scheduling NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA as controlled substances under the CSA.

#### **Determination of Appropriate Schedule**

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary and review of all other available data, the Acting Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 21 U.S.C. 812(b)(1), finds that:

(1) NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA have a high potential for abuse that is comparable to other schedule I substances such as delta-9-tetrahydrocannabinol ( $\Delta^9$ -THC) and JWH-018;

(2) NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA currently have no accepted medical use in treatment in the United States<sup>2</sup>; and

(3) There is a lack of accepted safety for use of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA under medical supervision.

Based on these findings, the Acting Administrator concludes that naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (other names: NM2201; CBL2201), N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-

<sup>2</sup> Although there is no evidence suggesting that NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, or 5F-CUMYL-P7AICA have currently accepted medical uses in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. the drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (1992), *pet. for rev. denied*, *Alliance for Cannabis Therapeutics v. DEA*, 15 F.3d 1131, 1135 (D.C. Cir. 1994).

fluoropentyl)-1H-indazole-3-carboxamide (other name: 5F-AB-PINACA), 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA, SGT-78), methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate (other names: MMB-CHMICA, AMB-CHMICA), and 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide (other name: 5F-CUMYL-P7AICA), including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, warrant control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

#### **Requirements for Handling NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA**

NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA will continue<sup>3</sup> to be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. *Registration.* Any person who handles, or desires to handle, NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, or 5F-CUMYL-P7AICA must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312.

2. *Security.* NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA are subject to schedule I security requirements and must be handled in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling these five substances must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA must be in compliance with 21 U.S.C. 825 and

<sup>3</sup> NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA have been subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h), by virtue of the July 10, 2018 temporary scheduling order (83 FR 31877) and the subsequent one year extension of that order (July 13, 2020, 85 FR 42296).

958(e), and be in accordance with 21 CFR part 1302.

4. *Quota.* Only registered manufacturers are permitted to manufacture NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, or 5F-CUMYL-P7AICA in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

5. *Inventory.* Every DEA registrant who possesses any quantity of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA was required to keep an inventory of all stocks of these substances on hand as of July 10, 2018, pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

6. *Records and Reports.* Every DEA registrant must maintain records and submit reports with respect to NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and/or 5F-CUMYL-P7AICA, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and/or 5F-CUMYL-P7AICA to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

7. *Order Forms.* Every DEA registrant who distributes NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, or 5F-CUMYL-P7AICA must continue to comply with the order form requirements, pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

8. *Importation and Exportation.* All importation and exportation of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, or 5F-CUMYL-P7AICA must continue to be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity involving NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, or 5F-CUMYL-P7AICA not authorized by, or in violation of, the CSA or its implementing regulations is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

## Regulatory Analyses

### *Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)*

In accordance with 21 U.S.C. 811(a), this final scheduling action is subject to formal rulemaking procedures performed “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

### *Executive Order 12988, Civil Justice Reform*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

### *Executive Order 13132, Federalism*

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

This rule does not have tribal implications warranting the application of E.O. 13175. It does not 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.

### *Regulatory Flexibility Act*

The Acting Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. On July 10, 2018, DEA published an order to temporarily place these five substances in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h).

DEA estimates that all entities handling or planning to handle these substances have already established and implemented the systems and processes required to handle NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, or 5F-CUMYL-P7AICA as schedule I controlled substances. There are currently 28 registrations authorized to handle NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and/or 5F-CUMYL-P7AICA specifically, as well as a number of registered analytical labs that are authorized to handle schedule I controlled substances generally. DEA estimates these 28 registrations encompass 22 entities. Some of these entities are likely to be large entities. However, DEA does not have information of registrant size and the majority of DEA registrants are small entities or are employed by small entities. Therefore, DEA conservatively estimates as many as 22 small entities are affected by this rule.

A review of the 28 registrations indicates that all entities that currently handle NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, or 5F-CUMYL-P7AICA also handle other schedule I controlled substances, and have established and implemented (or maintain) the systems and processes required to handle NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, or 5F-CUMYL-P7AICA. Therefore, DEA anticipates that this rule will impose minimal or no economic impact on a substantial number of small entities.

### *Unfunded Mandates Reform Act of 1995*

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, DEA has determined and certifies that this action would not result in any 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 \* \* \*.” Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

### *Congressional Review Act*

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this final rule to the Government Accountability Office, the House, and the Senate under the CRA.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

Determination To Make Rule Effective Immediately

As indicated above, this rule finalizes the schedule I control status of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA that has already been in effect for over two and a half years by virtue of the July 10, 2018, temporary scheduling order (83 FR 31877) and the subsequent one-year extension of that

order (July 13, 2020, 85 FR 42296). The July 2018 order was effective on the date of publication, and was based on findings by the then-Acting Administrator that the temporary scheduling of these substances was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1).

Because this rule finalizes the control status of NM2201, 5F-AB-PINACA, 4-CN-CUMYL-BUTINACA, MMB-CHMICA, and 5F-CUMYL-P7AICA that has already been in effect for over two and a half years, it does not alter the legal obligations of any person who handles these substances. Rather, it merely makes permanent the current scheduling status and corresponding legal obligations. Therefore, DEA is making the rule effective on the date of publication in the Federal Register, as any delay in the effective date is unnecessary and would be contrary to the public interest. See 5 U.S.C. 553(d).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11,

■ a. Add paragraphs (d)(81) through (d)(85); and

■ b. Remove and reserve paragraphs (h)(31) through (35);

The additions read as follows:

§ 1308.11 Schedule I.

\* \* \* \* \*

(d) \* \* \*

(81) Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (Other names: NM2201; CBL2201) ..... 7221
(82) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (Other name: 5F-AB-PINACA) ..... 7025
(83) 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA; SGT-78) ..... 7089
(84) methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA) ..... 7044
(85) 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA) ..... 7085

\* \* \* \* \*

D. Christopher Evans,

Acting Administrator.

[FR Doc. 2021-11974 Filed 6-9-21; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF STATE

22 CFR Part 120

[Public Notice: 11443]

International Traffic in Arms Regulations: Notification of Temporary Suspensions, Modifications, and Exceptions to Regulations

AGENCY: Department of State.

ACTION: Extension of temporary suspensions, modifications, and exceptions.

SUMMARY: The Department of State is issuing this document to inform the public of a third extension to temporary suspensions, modifications, and exceptions to certain provisions of the International Traffic in Arms Regulations (ITAR) to provide for continued telework operations during the current SARS-COV2 public health emergency. This action is taken in order to ensure continuity of operations

among members of the regulated community.

DATES: This document is issued June 10, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Engda Wubneh, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-1809, or email ddtccustomerservice@state.gov. ATTN: Extension of Suspension, Modification, and Exception—Telework.

SUPPLEMENTARY INFORMATION: In March 2020 a national emergency was declared as a result of the COVID-19 pandemic. On May 1, 2020, the Department of State (the Department) published in the Federal Register a notification of certain temporary suspensions, modifications, and exceptions to the ITAR, that were necessary to ensure continuity of operations within the Directorate of Defense Trade Controls (DDTC) and among entities registered with DDTC pursuant to part 122 of the ITAR (85 FR 25287). These actions were taken pursuant to ITAR § 126.2, which allows for the temporary suspension or modification of provisions of the ITAR, and ITAR § 126.3, which allows for exceptions to provisions of the ITAR. These actions were taken in the interest of the security and foreign policy of the United States and were warranted due

to the exceptional and undue hardships and risks to safety caused by the public health emergency related to the SARS-COV2 pandemic.

Subsequently, on June 10, 2020 (85 FR 35376), the Department published in the Federal Register a request for comment from the regulated community regarding the efficacy and termination dates of the temporary suspensions, modifications, and exceptions provided in 85 FR 25287, and requesting comment as to whether additional measures should be considered in response to the public health crisis. Of the four temporary suspensions, modifications, and exceptions to the ITAR announced in the May 1 notification referenced above, DDTC reviewed the public comments and decided to extend two measures until December 31, 2020: (1) ITAR § 120.39(a)(2) allowance for remote work; and (2) authorization to allow remote work under technical assistance agreement, manufacturing agreement, or exemption.

Based upon continued public health recommendations and as informed by responses to the request for public comment in June 2020, it is apparent to DDTC that regulated entities will continue to engage in telework for the foreseeable future. Many commenters,

one industry association, and several individual entities endorsed the telework provisions and requested that these measures be extended, potentially indefinitely. DDTC agreed and extended the two measures because DDTC believed that a failure to extend the temporary suspensions, modifications, and exceptions would have a negative impact on regulated entities' ability to safely engage in continued operations in the midst of the ongoing global public health emergency. Based upon the comments received and DDTC's experience over the course of the pandemic, it is apparent that these measures support the current work environment and are expected to remain relevant in a post-pandemic environment.

Although the Department is of the opinion that the notice and comment requirements of the Administrative Procedure Act are not applicable, in addition to the efforts described above, the Department published a notice of proposed rulemaking (NPRM) (86 FR 28503, May 27, 2021), to solicit comments to proposed revisions to the ITAR provisions related to remote work. DDTC is seeking in this proposed rule to adapt to the new reality of how the regulated community is working and will work in the future. DDTC's position is consistent with the Arms Export Control Act and informed by the regulated community's comments and DDTC's assessment of the security requirements appropriate for ITAR-controlled technical data. The NPRM is entitled "Amendment to the International Traffic in Arms Regulations: Regular Employee" (RIN 1400-AF17). In the interest of ensuring sufficient time to adequately address comments and prepare publication of a final rule, and to ensure there is no disruption of regulated entities' ability to safely engage in continued operations, DDTC is modifying and extending these temporary suspensions, modifications, and exceptions until it publishes a final rule for RIN 1400-AF17; the Department intends to terminate the temporary actions announced herein in that **Federal Register** publication.

DDTC notes that the text of the temporary suspensions, modifications, and exceptions below differs slightly from that of the prior two documents in that specific reference to Russia has been removed from the clause "so long as the individual is not located in a country listed in ITAR § 126.1." By rulemaking of March 18, 2021, DDTC amended ITAR § 126.1 to include Russia (86 FR 14802), thereby making specific reference here unnecessary.

Pursuant to ITAR §§ 126.2 and 126.3, in the interest of the security and foreign policy of the United States and as warranted by the exceptional and undue hardships and risks to safety caused by the public health emergency related to the SARS-COV2 pandemic, notice is provided that the following temporary suspensions, modifications, and exceptions are being extended as follows:

1. As of March 13, 2020, a temporary suspension, modification, and exception to the requirement that a regular employee, for purposes of ITAR § 120.39(a)(2), work at the company's facilities, to allow the individual to work at a remote work location, so long as the individual is not located in a country listed in ITAR § 126.1. The Department will terminate this suspension, modification, and exception by publication of a document in the **Federal Register**.

2. As of March 13, 2020, a temporary suspension, modification, and exception to authorize regular employees of licensed entities who are working remotely in a country not currently authorized by a technical assistance agreement, manufacturing license agreement, or exemption to send, receive, or access any technical data authorized for export, reexport, or retransfer to their employer via a technical assistance agreement, manufacturing license agreement, or exemption so long as the regular employee is not located in a country listed in ITAR § 126.1. The Department will terminate this suspension, modification, and exception by publication of a document in the **Federal Register**.

This document makes no other revision to the document published at 85 FR 25287, nor does it make any other temporary suspension, modification, or exception to the requirements of the ITAR.

(Authority: 22 CFR 126.2 and 126.3)

**Michael F. Miller,**

*Deputy Assistant Secretary for Defense Trade Controls, U.S. Department of State.*

[FR Doc. 2021-12206 Filed 6-9-21; 8:45 am]

**BILLING CODE 4710-25-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**24 CFR Parts 5, 91, 92, 570, 574, 576, 903**

[Docket No. FR-6249-I-01]

RIN 2529-AB01

### Restoring Affirmatively Furthering Fair Housing Definitions and Certifications

**AGENCY:** Office of Fair Housing and Equal Opportunity, HUD.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Department of Housing and Urban Development (HUD) publishes this interim final rule to restore certain definitions and certifications that have been through notice-and-comment scrutiny and that are grounded in legal precedent to its regulations implementing the Fair Housing Act's requirement to affirmatively further fair housing (AFFH) and reinstate a process by which HUD will provide technical assistance and other support to funding recipients who are engaged in fair housing planning to support their certifications. No program participant will be required to participate in this process, which is for the benefit of those who want assistance in fulfilling their statutory obligations. HUD will provide these services prior to the effective date of this interim final rule. HUD determined that it is necessary for this narrowly focused rule to go into effect on July 31, 2021, because HUD funding recipients must certify compliance with their duty to AFFH on an annual basis and HUD itself has a continuous statutory obligation to ensure that the Fair Housing Act's AFFH obligations are followed. HUD finds that the definitions in the current regulation, which was promulgated in 2020 without notice-and-comment procedures, are at odds with the statutory AFFH duty as described in decades of judicial precedent and agency practice. This risks confusing funding recipients, who are certifying compliance with a regulatory definition that does not in fact satisfy their statutory AFFH obligation. While HUD therefore has determined that this rule will go into effect on July 31, it nonetheless solicits comments on this action so that it may consider public views before the effective date. HUD promulgates this interim final rule to ensure that program participants have regulatory certainty, while delaying the effective date long enough to provide time for HUD to

review comments and, if necessary, act on them prior to the effective date.

**DATES:**

*Effective date:* July 31, 2021.

*Comment due date:* July 12, 2021.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim final rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

*1. Submission of Comments by Mail.*

Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

*2. Electronic Submission of Comments.*

Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

*Note:* To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at

800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Sasha Samberg-Champion, Deputy General Counsel for Enforcement and Fair Housing, 451 7th Street SW, Room 10110, Washington, DC 20410 telephone number 202-402-3413 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*The Affirmatively Furthering Fair Housing Mandate*

The Fair Housing Act (title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619) declares that “it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” See 42 U.S.C. 3601. The Fair Housing Act prohibits among other things, discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of “race, color, religion, sex, familial status,<sup>1</sup> national origin, or handicap.”<sup>2</sup> See 42 U.S.C. 3604 and 3605. The Fair Housing Act extends beyond this non-discrimination mandate, requiring HUD to administer its programs and activities relating to housing and urban development in a manner that affirmatively furthers the purposes of the Fair Housing Act. 42 U.S.C. 3608(e)(5). While this mandate is directly imposed on HUD, HUD carries it out primarily by extending the obligation to certain recipients of HUD funding. Congress has repeatedly reinforced the AFFH mandate for funding recipients, embedding within the Housing and Community Development Act of 1974, the Cranston-Gonzalez National Affordable Housing Act of 1990, and the Quality Housing and Work Responsibility Act of 1998, the obligation that certain HUD program participants certify, as a condition of

<sup>1</sup> The term “familial status” is defined in the Fair Housing Act at 42 U.S.C. 3602(k). It includes one or more children who are under the age of 18 years being domiciled with a parent or guardian.

<sup>2</sup> Although the Fair Housing Act was amended in 1988 to extend civil rights protections to persons with “handicaps,” the term “disability” is more commonly used and accepted today to refer to an individual’s physical or mental impairment that is protected under federal civil rights laws, the record of such an impairment, and being regarded as having such an impairment. For this reason, except where quoting from the Fair Housing Act, HUD uses the term “disability.”

receiving Federal funds, that they will AFFH. See 42 U.S.C. 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437C-1(d)(16). As described below, Congress enacted these requirements against the background of judicial and administrative construction of the Fair Housing Act’s AFFH requirement, which is presumed to have been incorporated in those later-enacted Congressional mandates.

For decades, courts have held that the AFFH obligation imposes a duty on HUD and its grantees to affirmatively further the purposes of the Fair Housing Act. These courts have held that funding recipients, to meet their AFFH obligations, must, at a minimum, ensure that they make decisions informed by preexisting racial and socioeconomic residential segregation. The courts have further held that, informed by such information, funding recipients must strive to dismantle historic patterns of racial segregation; preserve integrated housing that already exists; and otherwise take meaningful steps to further the Fair Housing Act’s purposes beyond merely refraining from taking discriminatory actions and banning others from such discrimination.

Soon after the enactment of the Fair Housing Act, the U.S. Court of Appeals for the Third Circuit, in *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970), held that HUD is obligated to “utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties” under the Fair Housing Act. *Id.* at 821. The Third Circuit further held that any HUD discretion must be exercised to not just prevent discrimination in housing, but to align the federal government “in favor of fair housing.” *Id.* at 819-20. It follows that, where HUD delegates decision-making responsibility to its grantees, HUD grantees must likewise gather and consider relevant information such as racial and socioeconomic segregation in housing to inform decisions that will foster integration and not further perpetuate segregation.

Only a few years later, the U.S. Court of Appeals for the Second Circuit, in *Otero v. New York City Housing Auth., et al.*, 484 F.2d 1122 (2d Cir. 1973), similarly held that the obligation to AFFH requires that “[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos,<sup>3</sup> of

<sup>3</sup> Reflecting the era in which it was enacted, the Fair Housing Act’s legislative history and early



racial groups whose lack of opportunity the Act was designed to combat.” *Id.* at 1134. *Otero* further held that, to accomplish this goal, HUD and funding recipients must take into account the socioeconomic and demographic makeup of the neighborhoods they govern, reasoning that “the affirmative duty placed on the Secretary of HUD by § 3608(e)(5) and through him on other agencies administering federally-assisted housing programs also requires that consideration be given to the impact of proposed public housing programs on the racial concentration in the area in which the proposed housing is to be built.” *Id.* at 1133–34.

In *NAACP, Boston Chapter v. HUD*, 817 F.2d 149 (1st Cir. 1987), the U.S. Court of Appeals for the First Circuit likewise found that the AFFH mandate in 42 U.S.C. 3608(e)(5) requires, “as a matter of language and of logic,” that HUD and its funding recipients do more than refrain from discrimination. *Id.* at 154. *NAACP* involved a claim that HUD and Boston officials knew the city’s neighborhoods and housing were racially segregated, yet they failed to utilize the “immense leverage” of federal funds to “provide desegregated housing so that the housing stock is sufficiently large to give minority families a true choice of location.” *Id.* at 152. The court held that HUD’s obligation to AFFH requires that “HUD do more than simply not discriminate itself”; rather, HUD must “use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.” *Id.* at 155. Like *Shannon, NAACP* explained that, to carry out this AFFH obligation effectively, HUD and its grantees must “consider the effect of a HUD grant on the racial and socio-economic composition of the surrounding area,” including historical patterns of segregation. *Id.* at 156.

Thus, each federal court of appeals that has construed the Fair Housing Act’s AFFH requirement has recognized that the AFFH obligation requires a funding recipient to consider existing segregation, including racial segregation, and other barriers to fair housing, and then take meaningful action to address them. These cases make plain that the AFFH obligation requires HUD and recipients of its funding to take proactive steps towards fair housing in this manner, beyond merely refraining from discrimination. These judicially recognized AFFH

principles cannot be reconciled with PCNC’s far more limited definition of affirmatively furthering fair housing, which a funding recipient satisfies by taking any step rationally related to any of a large set of objectives, some of which are not intrinsically about fair housing at all. More recently, courts applying and construing the AFFH requirement, and the precedents described above, have recognized that discretion and flexibility that HUD and its funding recipients have are inherent to the statutory obligation, because the precise actions needed depend on the local context. At the same time, they have continued to recognize that this discretion is cabined by the obligations to meaningfully assess racial and other forms of segregation and other impediments to fair housing and then take meaningful actions to address them. For example, in *Thompson v. HUD*, 348 F. Supp. 2d 398, 409 (D. Md. 2005), the court found that HUD violated its duty to AFFH by limiting its efforts to desegregate public housing in Baltimore to the city limits, as opposed to widening its focus to the Baltimore region as a whole. *Id.* at 459, 461. In ordering HUD to take a regional approach, the court found that the AFFH mandate requires HUD to adopt policies “whereby the effects of past segregation in Baltimore City public housing may be ameliorated by the provision of public housing opportunities beyond the boundaries of Baltimore City.” *Id.* at 462. *See also U.S. ex rel. Anti-Discrimination Ctr. v. Westchester Cnty.*, 2009 WL 455269 (S.D.N.Y. Feb. 24, 2009) (finding program participant’s certification that it would AFFH deficient where it failed to adequately consider the impact of race on housing opportunities in the county).

While the Supreme Court has never had occasion to consider the scope of the AFFH provision, it has consistently recognized and noted the Fair Housing Act’s broad and remedial goals and has repeatedly observed that the Act is meant not just to bar discrete discriminatory acts, but to affirmatively counteract the nation’s long history of racial segregation and discriminatory housing practices and policies.

In *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 211 (1972), while analyzing the scope and purpose of the Act soon after the law was enacted and finding that it conferred very broad standing on private litigants to challenge discrimination, the Court relied on the statements of the Act’s cosponsor Senator Walter F. Mondale that: “the reach of the proposed law was to replace the ghettos ‘by truly integrated

and balanced living patterns.’” Decades later, in confirming the unanimous view of the courts of appeals that the Act permits disparate-impact claims, the Court further explained that “[m]uch progress remains to be made in our Nation’s continuing struggle against racial isolation. . . . The Court acknowledges the Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.” *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 546–47 (2015). As the Supreme Court held in *Inclusive Communities Project*, the Act’s broad remedial purposes cannot be accomplished simply by banning intentional discrimination. The AFFH requirement plays a key role in the accomplishment of those purposes, requiring HUD and recipients of federal financial assistance to take affirmative steps to create an open, integrated society and to eliminate the barriers that stand in the way of truly equal housing opportunities for underserved populations.

Moreover, Congress has repeatedly confirmed its view that the AFFH mandate imposes affirmative obligations on HUD funding recipients. In three separate statutes post-dating the Fair Housing Act—the Housing and Community Development Act of 1974, the Cranston-Gonzalez National Affordable Housing Act, and the Quality Housing and Work Responsibility Act of 1998—Congress has required covered HUD program participants to certify, as a condition of receiving Federal funds, that they will AFFH. *See* Public Law 93–383, the Housing and Community Development Act of 1974, 88 Stat. 633, (Aug. 22, 1974), *as amended* by Public Law 98–181, Supplemental Appropriations Act of 1984, 97 Stat. 1153, (Nov. 30, 1984) (*codified at* 42 U.S.C. 5304(b)(2), Pub. L. 101–625, Cranston-Gonzalez National Affordable Housing Act, 104 Stat. 4079 (Nov. 28, 1990) (*codified at* 42 U.S.C. 5306(d)(7)(B), 12705(b)(15); Pub. L. 105–276, Quality Housing and Work Responsibility Act of 1998, 112 Stat. 2461, (Oct. 21, 1998) (*codified at* 42 U.S.C. 42 1437C–1(d)(16)). The certifications these laws require are designed to ensure compliance with a term that Congress necessarily understood to have the content given it by the courts and the agency tasked with overseeing compliance. *See e.g.* 42 U.S.C. 5304(b)(2) (requiring certification “that the grantee will affirmatively further fair housing”); 5306(d)(7)(B) (“No amount may be distributed by any State or the Secretary under this

court decisions, including those referenced throughout this preamble, refer to “ghettos” when discussing racially concentrated areas of poverty.



subsection . . . unless such unit of general local government certifies that . . . it will affirmatively further fair housing”), 12705(b)(15) (requiring certification “that the jurisdiction will affirmatively further fair housing”), 1437C–1(d)(16) (requiring the public housing agency’s certification that it “will affirmatively further fair housing”). It is well-settled that Congress is presumed to be aware of an administrative or judicial interpretation of a statutory provision and to adopt that interpretation when it re-enacts that statute or uses the same statutory language elsewhere without change. *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752 (2018) (citing *Lorillard v. Pons*, 434 U.S. 575, 580 (1978); *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) (explaining that “[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well.”). See also *Tex. Dep’t of Hous. & Cmty. Affairs*, 576 U.S. at 536–38 (applying the concept of “implicit ratification” to the Fair Housing Act).

#### *HUD’s Implementation of the Affirmatively Furthering Fair Housing Mandate*

For decades, consistent with this judicial precedent, HUD interpreted the AFFH mandate as requiring the agency to use its programs to do more than simply not discriminate and bar others from discriminating. HUD instead interpreted this obligation to mean that it was required to use its programs to take affirmative steps to proactively overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities for all.<sup>4</sup> Since 1996, HUD required its grantees to support their certifications that they were affirmatively furthering fair housing by undertaking an Analysis of Impediments to Fair Housing Choice (AI), a form of fair housing planning. For example, HUD regulations for program participants that submit

<sup>4</sup> The requirement of recipients of Federal housing and urban development funds and other Federal funds to affirmatively further fair housing has also been reiterated through executive order predating the PCNC rule. Executive Order 12892, entitled “Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,” issued January 17, 1994, vests primary authority in the Secretary of HUD for all federal executive departments and agencies to administer their programs and activities relating to housing and urban development in a manner that furthers the purposes of the Fair Housing Act.

Consolidated Plans require an AFFH compliance certification. For many years, these regulations provided that, in making such certification, a grantee would commit to conducting an “analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.” 24 CFR 91.225(a)(1), 91.325(a)(1) and 91.425(a)(1) (1996). The AI is meant to be an assessment of conditions, both public and private, that affect fair housing choice within a grantee’s jurisdiction. HUD’s Fair Housing Planning Guide (FHPG) provided extensive guidance on how to AFFH by supplying a framework for fair housing planning.

#### The 2015 AFFH Rule

In July 2013, HUD proposed regulations that codified and implemented the agency’s longstanding interpretation of the AFFH requirement. After undertaking an extensive review of comments, HUD issued its 2015 final AFFH rule to implement the statutory requirement with respect to consolidated plan and public housing agency program participants, published on July 16, 2015 at 80 FR 42272.

Consistent with decades of understanding of the obligation to AFFH as discussed throughout this preamble, the rule defined a funding recipient’s AFFH duty as “taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with racially balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.” The rule further defined “meaningful actions” as “significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.” The AFFH rule defined “fair housing choice,” in turn, to mean that “individuals and families have the information, opportunity, and options to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familiar status, national origin, or disability.” In sum, HUD restated and memorialized the substantive content of the statutory obligation to AFFH, based on longstanding precedent in caselaw,

administrative practice, and congressional intent and ratification, in various definitions in the 2015 AFFH rule.

In addition, the 2015 AFFH rule established a process whereby program participants<sup>5</sup> would conduct a more standardized Assessment of Fair Housing (AFH) instead of an AI. The rule further required the program participant to certify that it would take meaningful actions to further the goals identified in its AFH. Program participants were not required to conduct and submit an AFH until after HUD had made available its Assessment Tool available for their use,<sup>6</sup> and instead were instructed to continue conducting AIs (*i.e.*, a variant of the same process they had followed for many years) to meet their AFFH obligations. 24 CFR 5.160(a)(3) (2015).

Following promulgation of the 2015 AFFH rule, HUD began to implement the process contemplated by its 2015 AFFH rule, including producing assessment tools for program participants to use to conduct AFHs. HUD reviewed forty-nine submitted AFHs. In 2018, however, HUD paused implementation. HUD published three **Federal Register** Notices on May 23, 2018, one of which withdrew the Assessment Tool for Local Governments, the only available HUD-provided Assessment Tool for program participants to use when conducting an AFH. 83 FR 23927 (May 23, 2018). As explained in a second **Federal Register** Notice published that same day, HUD directed all program participants who had not yet completed an AFH that they would continue to be required to conduct an AI. 83 FR 23927–23928.<sup>7</sup> This well-established AI obligation and planning process continued to be in place until the PCNC regulation took effect on September 8, 2020.

<sup>5</sup> Program participants subject to the requirements of the 2015 rulemaking included jurisdictions and insular areas required to submit consolidated plans for the Community Development Block Grant (CDBG) program (see 24 CFR part 570, subparts D and I); the Emergency Solutions Grants (ESG) program (see 24 CFR part 576); the HOME Investment Partnerships (HOME) program (see 24 CFR part 92); and the Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574); as well as Public housing agencies (PHAs) receiving assistance under sections 8 or 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f or 42 U.S.C.1437g).

<sup>6</sup> Along with a HUD-provided assessment tool, HUD-provided data also needed to be available to program participants to trigger the obligation to conduct an AFH under the 2015 AFFH rule.

<sup>7</sup> The third **Federal Register** Notice withdrew an earlier Notice that had extended the deadline for submitting an AFH for certain program participants. 83 FR 23928.

## The 2020 Proposed Rule and PCNC

HUD published a proposed rule in January 2020, 85 FR 2014 (January 14, 2020), to repeal and replace the 2015 AFFH rule. However, on August 7, 2020, at 85 FR 47899, HUD abandoned that proposed rulemaking and instead promulgated the PCNC final rule, which not only repealed the 2015 AFFH rule, but eliminated the regulatory framework that preexisted that rule. It thus left program participants without any obligation to undertake any type of fair housing planning (whether an AFH, an AI, or any other) and leaving HUD without any mechanism to assist jurisdictions that wished to continue such activity. As described below, and of particular relevance to this rulemaking, the PCNC rule also redefined the AFFH obligation to which funding recipients must certify, without reconciling the new definition with the statutory requirement and judicial precedent.

HUD promulgated PCNC without following notice-and-comment rulemaking procedures deciding that the PCNC rule was exempt from the Administrative Procedure Act (APA)'s notice and comment requirement because the regulation "applies only to the AFFH obligation of grantees." The APA exempts from notice-and-comment rulemaking any "matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." 5 U.S.C. 553(a)(2). However, as PCNC acknowledged, HUD's "rule on rules" at 24 CFR part 10 requires HUD generally to follow the APA notice-and-comment rulemaking procedures notwithstanding any statutory exception that might otherwise apply, such as the grantmaking exception. HUD instead relied upon the Secretary's general regulatory waiver authority at 24 CFR 5.110 and codified at 42 U.S.C. 3535(q) to waive any regulatory requirement "[u]pon determination of good cause." As justification, the preamble to the PCNC rule stated that "AFFH has been the subject of significant debate and public comment over the course of many years and this rule will ensure that program participants have the timely clarity they need concerning their legal obligations as grantees." 85 FR 47901. In the waiver notice accompanying the PCNC regulation, HUD asserted that "[i]n light of this public engagement, continued notice and comment concerning AFFH is unnecessary and would simply be a legal formality without adding

substance to the debate."<sup>8</sup> The waiver did not acknowledge that, while other issues related to the AFFH requirement had been the subject of notice and public comment, the definition of AFFH that appears in the PCNC rule had never been published for public comment. Notwithstanding this lack of prior notice and comment, the PCNC rule withdrew the 2015 rule's definition of the AFFH obligation and replaced it with a novel definition that HUD now finds was not a reasonable interpretation of the statutory mandate. The PCNC rule acknowledged that, under any reasonable reading of the AFFH requirement, compliance "requires more than simply not discriminating," and grantees are required to "actually promote fair housing." 85 FR 47902. Nevertheless, the rule went on to define "fair housing" as "housing that, among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws." 85 FR 47905. The rule thus redefined "fair housing" to include attributes such as "safe" and "decent" that, while laudable and consistent with HUD's mission, are legally distinct from the requirements of the Fair Housing Act's AFFH obligation. It then revised the regulatory definition of "affirmatively further" to mean "to take *any action* rationally related to promoting any attribute or attributes of fair housing . . ." *Id.* (emphasis added). Finally, the PCNC rule provided that a program participant's certification of compliance with this statutory duty would be deemed sufficient if the participant took, during the relevant period, "any action that is rationally related to promoting one or more attributes of fair housing. . . ." using the definition of "fair housing" described above. 85 FR 47906.

Thus, under the PCNC rule, a program participant's certification of compliance with the AFFH obligation amounted to a certification that the program participant would take any action rationally related to promoting one or more of the following "attributes": Housing that is affordable, safe, decent, free of unlawful discrimination, or accessible as required under civil rights laws. This certification requirement can be satisfied with minimal or no action not already required by other non-civil rights statutes and HUD rules, and without doing anything to remedy fair

housing issues. For example, a jurisdiction taking any steps to meet HUD's programmatic requirements for maintaining the physical condition of federally supported housing, such as ensuring that fire exits are not blocked, smoke detectors are in good working order, or lighting is adequate, could certify compliance under the PCNC rule, despite taking no steps to stop discrimination that violates the Fair Housing Act, let alone any proactive steps of the kind the AFFH statutory mandate requires. Put simply, the PCNC rule made a participant's certification insufficient to ensure compliance with the AFFH obligation.

HUD thus finds that the PCNC rule did not interpret the AFFH mandate in a manner consistent with statutory requirements, HUD's prior interpretations, or judicial precedent. Nor did it provide sufficient justification for this substantial departure. Rather than attempting to reconcile its definition with these precedents, the PCNC rule dismissed them as mistaken in conclusory fashion. 85 FR 47902.

Through this rule, HUD is repealing the PCNC rule and publishing this interim final rule to reinstate the relevant definitions that were promulgated pursuant to the APA's notice and comment requirements in HUD's 2015 AFFH rule, as well as appropriate certifications that incorporate these definitions, effective on July 31, 2021. This interim final rule thus reinstates the regulatory requirement, consistent with the statutory mandate, agency interpretations, and judicial precedent, that program participants certify that they take meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. Program participants have long been accustomed to certifying compliance with this substantive standard and comparable procedural requirements (such as completion of the AI process). Additionally, while this interim final rule does not require program participants to undertake any specific type of fair housing planning to support their certifications, it provides notice that HUD will once again offer technical support and other assistance for jurisdictions that wish to undertake AFHs, AIs, or other forms of fair housing planning.

<sup>8</sup> Partial Waiver of 24 CFR 10.1 Notice-and-Comment Requirement (July 23, 2020), <https://www.hud.gov/sites/dfiles/ENF/documents/6228-F-01%20PCNC%20-%20SIGNED%20Waiver%20-%207.23.20.11.42.pdf>.

## II. Justification for Interim Rule

### *Good Cause Under the Administrative Procedure Act*

In general, HUD publishes a rule for public comment in accordance with both the APA, 5 U.S.C. 553, and the agency's regulation on rulemaking at 24 CFR part 10. Both the APA and Part 10, however, provide for exceptions from that general rule where HUD finds good cause to omit advance notice of the opportunity for public comment. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). In order to publish a rule for effect prior to receiving and responding to public comments (*i.e.*, an interim final rule), the agency must make a finding that "good cause" exists.

HUD has determined that good cause exists to promulgate this interim final rule because it is in the public interest to publish this rule without advance notice and public comment in light of the present circumstances, and that subjecting the rule to notice and comment prior to publication would be impracticable and unnecessary. HUD's determination is based on, among other things, a combination of the following considerations. This interim final rule rescinds the PCNC regulation, currently codified at 24 CFR parts 5, 91, 92, 570, 574, and 903. HUD finds that the PCNC rule was promulgated improperly without notice and comment, and without sufficient explanation for its substantial departure from prior agency interpretations and judicial precedent concerning the AFFH obligation. As a result, the PCNC Rule creates substantial risks that reliance on the rule's certifications by HUD funding recipients, many of which are in jurisdictions where caselaw is irreconcilable with the PCNC rule, may place them in jeopardy of violation of their statutory AFFH obligations, and, were HUD to accept these certifications, may place the agency at risk of violating its own statutory duty to affirmatively further fair housing. While the PCNC rule fundamentally altered the regulatory landscape, this interim final rule is limited in scope and imposes no new requirements that have not already been the subject of prior notice and comment. It reinstates provisions that were in effect prior to the PCNC rule's promulgation. Under the unique circumstances here, HUD has good cause to omit advance notice and public comment prior to this rule taking effect.

Notwithstanding these good cause determinations for this IFR interim final rule to take effect without advance

notice and comment, HUD still requests and encourages public comments on all matters addressed in this rule.

Moreover, HUD recognizes that program participants may need some time to adjust to this restoration and may choose to seek assistance from HUD in doing so, and therefore delays the effective date until July 31, 2021. HUD has determined this is the longest delay it can provide consistent with the need to reinstate AFFH certifications that help ensure program participants' compliance with their statutory AFFH obligations in their expenditure of billions of federal dollars prior to the date on which many program participants make their annual certifications of compliance. HUD thus requests comments within 30 days of publication so that it may consider public views prior to the effective date.

### *This Limited Rulemaking Is Consistent With Notice-and-Comment Principles, Because It Restores Provisions That Have Gone Through Notice and Comment While Rescinding Provisions That Have Not*

This limited rulemaking reinstates definitions and corresponding certifications from the 2015 AFFH rule and provides notice of the reinstatement of a voluntary process by which HUD will assist program participants in complying with their AFFH obligations. HUD previously promulgated these provisions after extensive notice-and-comment process, so they are familiar to HUD program participants. HUD published a Notice of Proposed Rulemaking (NPRM) for its AFFH rule in 2013 and received over one thousand public comments. 78 FR 43709. HUD reviewed and considered those comments and then promulgated the AFFH rule in 2015.<sup>9</sup> In this interim final rule, HUD is reinstating definitions already promulgated in the 2015 rule, with a few technical changes to conform provisions that previously assumed the existence of mandatory fair housing

<sup>9</sup> HUD's full response to public comment on the restored definitions is contained in the preamble to the original publication of the 2015 AFFH rule at 80 FR 42272. *Cf. Citronelle-Mobile Gathering, Inc. v. Gulf Oil Corp.*, 420 F. Supp. 162, 170–71 (S.D. Ala. 1975), remanded on other grounds, 578 F.2d 1149 (5th Cir. 1978) (noting that the agency could have invoked "good cause" if it had been required to repromulgate its existing regulations because the regulations had previously been promulgated pursuant to notice and comment, stating, "No real purpose would have been served by requiring the redundant solicitation of public comment. This had already been previously accorded for exactly the same regulation in question . . . Repromulgation would have required the administrative procedures be once more employed, necessitating delay and a lapse in regulatory enforcement. This would have served no useful purpose.")

planning process and other procedures, such as completing an AFH or AI, to the more limited structure of this interim final rule.

Reinstating these definitions and corresponding certifications prior to public notice and comment is also necessary because the PCNC rule provided no opportunity for the public to comment before comprehensively redefining the AFFH mandate and the content of corresponding certifications that funding recipients make on a regular basis. Where, as here, a familiar regulatory definition that has passed through extensive notice and comment scrutiny is available, HUD believes the public interest is disserved by requiring funding recipients to certify compliance to a definition that has not benefited from public comment.

As an initial matter, HUD now believes it is doubtful that PCNC's invocation of notice and comment waiver authority was appropriate. PCNC invoked HUD's general regulatory waiver authority under 24 CFR 5.110 to waive its Part 10 regulations, which otherwise would have required notice-and-comment procedures, but in doing so it downplayed the statutory requirement that HUD maintain its Part 10 regulation, as well as the general principle that notice-and-comment rulemaking for major legal change best serves the public interest. A longstanding statutory provision requires HUD to maintain its Part 10 requirements, *i.e.*, to comply with notice-and-comment requirements.<sup>10</sup> In the PCNC rule, HUD minimized the significance of this provision, stating that Congress did "not abrogate the Secretary's independent statutory authority under 42 U.S.C. 3535(q) to waive regulations in specific circumstances." 85 FR 47904 (FN 78). HUD now believes that this was an overly restrictive reading of this provision that ignored Congress's clear intent to limit HUD's authority to eschew notice-and-comment requirements.

In any event, regardless of whether PCNC's reliance on the regulatory waiver to bypass notice-and-comment requirements was lawful, HUD believes it disserved the public interest such that there is a strong interest in immediately restoring a regulatory definition that has gone through notice-and-comment scrutiny and more sustained agency and public consideration. PCNC abandoned the agency's longstanding

<sup>10</sup> See Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Public Law 105–65, 111 Stat. 1344, 1365, § 208 (Oct. 27, 1997).

understanding of the AFFH obligation, declined to follow judicial precedent, and suddenly altered the duties and obligations of funding recipients around the country. No judicial authority or HUD guidance exists that would help program participants, communities, and fair housing stakeholders reconcile this newly minted definition with better-established understandings of the AFFH requirement. PCNC acknowledged this lack of judicial or agency precedent supporting its redefinition of the AFFH requirement. *See* 85 FR 47902, 47903 FN 54, 62.<sup>11</sup> It relied solely on dictionaries, *id.* at 47901–902, but without explaining how this approach justified the redefinition of the term “fair housing” to include actions that do not constitute fair housing as this term is ordinarily used. HUD relied heavily on a policy-driven conclusion that it is too burdensome for program participants to conduct any fair housing analysis, not just of the sort that was required by the 2015 rule, but of the sort that was required for decades before. *Id.* at 47902–903. These fundamental changes in how the agency understands and implements a statutory obligation are of the magnitude that should warrant notice and comment.

In this context, this interim final rule is not an attempt to avoid notice and comment obligations; instead, it suspends a rule that is inconsistent with the AFFH statutory mandate, HUD’s prior interpretations, and judicial precedent and was improperly promulgated without notice and opportunity for comment in favor of provisions drawn from a rule that assiduously followed that process. HUD believes that leaving the PCNC rule in place—thus causing grant recipients to rely upon a confusing rule that was promulgated in disregard of notice and comment obligations—while seeking comment prior to publication on a proposal to reinstate provisions from the 2015 rule would subvert rather than honor the purposes of the notice and comment process. *Cf. Friends of*

*Animals v. Bernhardt*, 961 F.3d 1197, 1206 (D.C. Cir. 2020) (“But we do not see how a government action that illegally never went through notice and comment gains the same status as a properly promulgated rule such that notice and comment is required to withdraw it. . . . we are faced only with the repeal of a “rule” that illegally never went through notice and comment—in other words, a ‘non-rule rule.’”). The notice-and-comment requirement is intended to “serve the public interest by providing a forum for the robust debate of competing and frequently complicated policy considerations.” *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 115 (2d Cir. 2018); *see also Consumer Energy, Etc. v. F.E.R.C.*, 673 F.2d 425, 446 (D.C. Cir. 1982) (“The value of notice and comment prior to repeal of a final rule is that it ensures that an agency will not undo all that it accomplished through its rulemaking without giving all parties an opportunity to comment on the wisdom of repeal.”). HUD has determined that these salutary purposes are best served by reinstating provisions that have been subject to this “robust debate” but were undone without notice and comment, particularly as there has been little reliance on the PCNC rule’s definitions and certifications, which have been in place for only a short period of time.

Consistent with its commitment to principles of notice-and-comment rulemaking, HUD now solicits comments on the provisions it now promulgates on an interim basis and will consider all comments prior to the effective date of this interim final rule. HUD anticipates separately issuing an NPRM, which (unlike this interim final rule) will propose provisions that have not previously gone through notice and comment rulemaking. That notice will set forth and seek comment on more detailed proposed implementation of a program participant’s AFFH obligations and will seek to build on and improve the processes set forth in the 2015 AFFH rule to further help funding recipients comply with their statutory obligation while reducing the regulatory burden on them. HUD welcomes public participation in these efforts to continue to strengthen fair housing outcomes while reducing burden on program participants.

*HUD Believes the PCNC Rule Is Not Based on a Reasonable Construction of the AFFH Requirement as Construed by the Courts and Ratified by Congress*

While HUD has ample discretion to construe and apply the AFFH requirement, the PCNC regulation is

fundamentally inconsistent with the agency’s longstanding interpretation of its and funding recipients’ statutory obligation to AFFH, as well as the decades of authority described above interpreting the scope of this obligation. The current regulation does not require that program participants take any steps to further any fair housing outcomes as the term “fair housing” is generally understood, whereas the Housing and Community Development Act of 1974, the Cranston-Gonzalez National Affordable Housing Act, and the Quality Housing and Work Responsibility Act of 1998 all require program participants to certify that they will affirmatively further fair housing as Congress understood and ratified the term. This conflict puts program participants at risk of confusion and violation of a statutory duty. It is in the public interest not to expose program participants to that risk.

As explained above, under the current regulation, a program participant’s certification of compliance with the AFFH obligation amounts only to a certification that the program participant will take any single action rationally related to promoting one or more of the following “attributes:” Housing that is affordable, safe, decent, free of unlawful discrimination, or accessible as required under civil rights laws. Put simply, under PCNC, HUD is not requiring program participants to certify that they are taking actions that meet their actual statutory obligation to AFFH, and HUD risks not fulfilling its own understanding of its statutory obligations.

The PCNC rule thus does not represent a selection among reasonable options within HUD’s discretion. Had HUD given notice and taken comment before promulgating it, this substantive infirmity would almost certainly have been pointed out and HUD would have had to address it. The failure to abide by notice-and-comment requirements before promulgating the PCNC rule therefore is closely connected with the failure to put in place regulatory definitions that are consistent with precedent and that foster compliance with the law. HUD believes the public interest is best served by the timely reinstatement, prior to the deadline by which a great number of program participants must certify compliance, of definitions that not only went through notice-and-comment procedures but are familiar to program participants; are consistent with well-established judicial and agency precedent construing the AFFH obligation and certifications incorporating these definitions; and are further elaborated by years of regulatory

<sup>11</sup> PCNC’s preamble pointed to the Cranston-Gonzalez National Affordable Housing Act, of 1990, Public Law 101–625 102, 105, for the proposition that “Congress also broadened national housing policy grants administered by HUD, requiring AFFH certifications, to include goals such as a ‘decent, safe, and sanitary housing for every American’ and increasing the supply of ‘affordable housing.’” *See* 85 FR 47901. But this statute has several purposes. While one of its purposes was to promote decent, safe, and sanitary housing, and it incorporated a requirement that covered entities certify that they would affirmatively further fair housing, the statute does not include a nexus between that purpose and fair housing. As a result, HUD’s prior reliance on Cranston Gonzalez to justify this novel definition of fair housing was misplaced.

guidance that HUD has issued to assist grantees in compliance. Compliance with AFFH is included as a condition in a myriad of funding notices that HUD publishes on a regular basis and that it cannot delay past the effective date of this interim final rule. Similarly, HUD cannot delay past the effective date of this interim final rule because participants in the Community Development Block Grant (CDBG) program must submit their Annual Action Plans, which include AFFH certifications, by August 16 each year.

Each year, HUD provides States, local governments, and public housing agencies with billions of dollars in federal financial assistance, appropriated and authorized by Congress. As part of HUD's obligations as a grantor agency, consistent with longstanding statutory requirements, HUD oversees the use of such funds to ensure that taxpayer dollars are used in a responsible manner that is consistent with the law. For example, HUD is obligated to ensure that all federal grants are made consistently and in accordance with federal grant making requirements set forth at 2 CFR part 200. These requirements obligate HUD to engage in active oversight of its recipients, including ensuring compliance with civil rights requirements. *See, e.g.*, 2 CFR 200.300 ("The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements: Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.").

As a vital part of this oversight role, HUD requires program participants to annually certify that they will comply with various federal requirements, including the obligation to affirmatively further fair housing. Under the PCNC Rule, these certifications are to a standard that is inconsistent with the underlying legal obligation, preventing HUD from relying on them to carry out its oversight obligations. For these reasons, and with impending deadlines including the August 16 CDBG annual action plan deadline, it is imperative that HUD immediately provide its recipients with legally supportable definitions and certifications for HUD to meet its own obligations as a grantor agency and put its grantees on notice that PCNC represents a standard that HUD now believes is not consistent with the statutory obligation to

affirmatively further fair housing. Moreover, because certifications made under the PCNC rule do not require compliance with the Fair Housing Act, allowing that rule to remain in place risks further entrenching segregation and inequity in access to housing and opportunity, challenges that have been exacerbated by presently converging health, economic, and climate crises.

#### *HUD Is Delaying the Effective Date of This Interim Final Rule Until July 31, 2021*

While HUD is providing notice immediately that it does not regard the PCNC definitions as compliant with the statutory AFFH obligation, HUD's prior interpretations, and judicial precedent, HUD is delaying the effective date of this interim final rule until July 31, 2021 to give program participants time to adjust. HUD has determined that this is the longest delay of the effective date it can provide while ensuring that municipalities and other participants in the Community Development Block Grant program can submit annual action plans, including AFFH certifications, that are consistent with the AFFH statutory obligation as described above. CDBG annual action plans must be submitted by August 16 each year, and so HUD has determined that it is necessary for this rule to go into effect before then and to provide program participants with sufficient notice.<sup>12</sup>

Between the date of publication and the effective date, HUD will provide additional clarity to affected program participants. HUD will provide guidance and technical support to program participants regarding the interim final rule, including with respect to the reinstated definitions and certifications and with respect to fair housing planning and actions that program participants may voluntarily undertake in support of their certifications. Additionally, although the definitions have already been the subject of notice-and-comment rulemaking, HUD will seek comment for a period of 30 days from publication to solicit additional views. HUD will carefully consider all such comments and in response to those comments, as it deems appropriate, may amend the interim final rule accordingly.

#### *Conclusion*

Under the totality of the circumstances described above, HUD believes this limited-in-scope interim

final rule is justified by good cause.<sup>13</sup> HUD finds that the PCNC rule is contrary to the AFFH statutory mandate and constitutes a substantial departure from HUD's prior interpretations and judicial precedent. Moreover, the PCNC rule is contrary to multiple Congressional mandates with which HUD must act promptly to comply by removing the PCNC regulation and restoring definitions upon which program participants can reasonably rely in certifying compliance with their statutory duty to AFFH. HUD further finds that the PCNC rule was improperly promulgated without a sufficient reason for forgoing notice and comment rulemaking. This interim final rule reinstates provisions that have already undergone sufficient notice and comment processes, and HUD is now inviting additional comment and delaying the effective date of this interim final rule until July 31, 2021. HUD may further revise this interim final rule before its effective date in response to these comments. Additionally, HUD is reestablishing voluntary processes and technical assistance to assist program participants in complying with their statutory AFFH obligations and engage in fair housing planning.

#### **III. This Interim Final Rule**

Against this backdrop, this interim rulemaking is narrowly focused to meet the urgent need to withdraw the PCNC rule definition, which promotes confusion and noncompliance with the statutory obligation to AFFH, and to reinstate a definition that properly states that duty and is the result of notice and comment rulemaking. This interim final rule restores the understanding of the AFFH obligation for certain recipients of federal financial assistance from HUD to the previously established understanding by reinstating legally supportable definitions that are consistent with a meaningful AFFH requirement and certifications that incorporate these definitions. HUD has also amended the certifications in the program regulations at 24 CFR 91.225, 91.325, 91.425, 570.487, 903.7, and related record keeping requirements to restore meaningful AFFH certifications that incorporate appropriate definitions.

<sup>13</sup> *See Petry v. Block*, 737 F.2d 1193, 1200 (D.C. Cir. 1984) ("For here the combination of several extraordinary factors validates the Department's adoption of the interim rule under the mantle of 'good cause.'"); *see also Nat'l Women, Infants, & Children Grocers Ass'n v. Food & Nutrition Serv.*, 416 F. Supp. 2d 92, 105-107 (D.D.C. 2006) (finding that, under the totality of circumstances, a combination of the four reasons advanced by the agency established good cause to promulgate an interim final rule).

<sup>12</sup> *See* 42 U.S.C. 5316(b); 24 CFR 91.15(a); 24 CFR 570.304(c)(1).

Amendments to 24 CFR parts 92, 570, 574, and 576 include updated cross-references and clarification of program participants in the HOME, CDBG, Housing Opportunities for Persons With AIDS (HOPWA), and Emergency Solutions Grants programs regarding recordkeeping requirements. In a similar manner, this interim final rule amends 24 CFR 903.7(o), 903.15, and 24 CFR 903.23(f) to update cross-references to the amended definitions and certification provisions in 24 CFR 5.151 and 5.152 and to explain the relationship of the public housing agency plans to the consolidated plan and a PHA's fair housing requirements. The regulations also explain how HUD will assist program participants in carrying out their obligation and provides attendant definitions in 24 CFR 5.152. With this interim final rule, HUD does not, however, reinstate the obligation to conduct an AFH or AI, or mandate any specific fair housing planning mechanism.

The effect of the reinstatement of the 2015 AFFH rule definitions and certifications incorporating those definitions is that recipients once again can rely on HUD's regulatory definition to accurately articulate the purpose and meaning of their AFFH obligation. The critical importance of requiring funding recipients to certify to a regulatory definition that is consistent with longtime understandings of the AFFH obligation was recognized by the court in *National Fair Housing Alliance v. Carson*, 330 F. Supp. 3d 14 (D.D.C. 2018). In that case, plaintiffs challenged HUD's withdrawal of the Local Government Assessment Tools (and effective suspension of the AFH process), contending that eliminating these procedural requirements put HUD in violation of its own obligation to ensure that funding recipients comply with the AFFH requirement. The court determined that HUD's actions were not contrary to the Fair Housing Act because the AI requirement and the 2015 rule's definitions and certifications incorporating those definitions remained in place. *See* 330 F. Supp. 3d at 45. Accordingly, when HUD published PCNC and replaced the 2015 rule's definitions with ones unmoored from the Fair Housing Act, it withdrew the underpinnings of *National Fair Housing Alliance v. Carson's* reasoning that HUD was continuing to require compliance with the Act's substantive obligation.

Since some of the 2015 Rule's definitions may not be applicable absent the obligation to conduct an AFH or AI, HUD is not reinstating all definitions from the 2015 AFFH rule at 24 CFR

5.152 (2015). Instead, HUD is promulgating only those that are applicable and in force under this limited-in-scope interim final rule.<sup>14</sup> HUD is providing the definitions at 24 CFR 5.151 in order to inform program participants of how these terms are applied. The definitions include: "Affirmatively Furthering Fair Housing," "Disability," "Fair Housing Choice," "Housing Programs Serving Specified Populations," "Integration," "Meaningful Actions," "Racially or Ethnically Concentrated Areas of Poverty," "Segregation," and "Significant Disparities in Opportunity." These definitions correspond with the AFFH statutory mandates, HUD's long-standing interpretations, and judicial precedent.

HUD provides the definition of "Affirmatively Furthering Fair Housing" based on numerous judicial interpretations of the Fair Housing Act. For example, in *Otero v. New York City Housing Auth.*, the Second Circuit held that the AFFH mandate requires that "[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat." *Otero*, 484 F.2d at 1134. It found that this requirement flows from the evident legislative purpose, as Senator Mondale "pointed out that the proposed law was designed to replace the ghettos 'by truly integrated and balanced living patterns.'" *Otero*, 484 F.2d at 1134 (*citing* 114 Cong. Reg. 3422).

Similarly, in *NAACP, Boston Chapter v. HUD*, 817 F.2d at 154, the First Circuit held that "as a matter of language and logic, a statute that instructs an agency 'affirmatively to

<sup>14</sup> While some definitions from the 2015 AFFH rule referred to the Assessment Tool to provide more information, HUD does not restore these references. HUD has removed references to the AFH and other provisions of the 2015 AFFH rule that are no longer applicable. HUD restores 24 CFR 5.150 to similarly align with this approach, explaining that the purpose of the regulations, pursuant to the statutory obligation to affirmatively further fair housing, is to provide program participants with a substantive definition of the AFFH requirement, as well as to provide access to an effective planning approach to aid those program participants that wish to avail themselves of it in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. These conforming edits to the definitions and purpose do not change the meaning of the terms; they merely align them to the previously published regulations that are restored here. HUD believes that the restoration of these definitions will be helpful to recipients as they certify that they are affirmatively furthering fair housing consistent with prior judicial interpretations of the statutory mandate to affirmatively further fair housing.

further' a national policy of nondiscrimination would seem to impose an obligation to do more than simply not discriminate itself." *NAACP, Boston Chapter*, 817 F.2d at 154. It found that ". . . a failure to 'consider the effect of a HUD grant on the racial and socio-economic composition of the surrounding area' would be inconsistent with the Fair Housing Act's mandate. *Id.* at 156. Further, the court found that "the need for such consideration itself implies, at a minimum, an obligation to assess negatively those aspects of a proposed course of action that would further limit the supply of genuinely open housing and to assess positively those aspects of a proposed course of action that would increase that supply." *Id.* If HUD is "doing so in any meaningful way, one would expect to see, over time, if not in any individual case, HUD activity that tends to increase, or at least, that does not significantly diminish, the supply of open housing." *Id.*

Similarly, in *Thompson v. HUD*, the court found that the AFFH mandate requires consideration of the effect of its policies on the racial and socioeconomic composition of the surrounding area. *Thompson*, 348 F. Supp. 2d at 409; *see also* *Garrett v. Hamtramck*, 335 F. Supp. 16, 27 (E.D. Mich. 1971), *aff'd* 503 F.2d 1236 (6th Cir. 1974). HUD believes the 2015 rule's definition of AFFH is consistent with these rulings and others and can ensure that HUD and its program participants comply with the AFFH requirement.

Relatedly, in this interim final rule, HUD is including a definition of "Fair Housing Choice" that is consistent with these cases and others. For example, in *Thompson*, the court found that, "it is appropriate to note that there is a distinction between telling a person that he or she may not live in [a] place because of race and giving the person a choice so long as the place in question is, in fact, available to anyone without regard to race." 348 F. Supp. 2d at 450.

The other definitions provided in this interim final rule, which help to detail the meaning of the AFFH obligation, are similarly rooted in judicial precedent and statutory purpose. In *Otero*, the Second Circuit held that the AFFH mandate extends beyond HUD and to its recipients (in that case, the housing authority) and required funding recipients to take affirmative steps to promote integration. 484 F.2d at 1124. The obligation of program participants to take "Meaningful Actions," as defined in the 2015 rule and in this interim final rule, is a reasonable interpretation of this holding. *See also* *NAACP, Boston Chapter*, 817 F.2d at

154 (requiring the assessment of actions in a “meaningful way”).

In addition, because the AFFH obligation as intended by Congress and construed by the courts requires efforts to decrease segregation and promote integration, HUD finds it appropriate to once again include those concepts in the definition of AFFH and, in turn, reinstate the definitions for both “Segregation” and the converse, “Integration,” from the 2015 rule. *See Client’s Council v. Pierce*, 711 F.2d 1406, 1425 (8th Cir. 1983) (“Congress enacted section 3608(e)(5) to cure the widespread problem of segregation in public housing”); *see also Resident Advisory Bd. v. Rizzo*, 425 F. Supp. 987, 1013–1019 (E.D. Pa. 1976) *aff’d in part, rev’d in part on other grounds*, 564 F.2d 126 (3d Cir.), *cert. denied*, 435 U.S. 908 (1977) (“Each case brought under [3608(e)(5)] requires a close analysis of the facts peculiar to that case and the city in which the facts have occurred . . . in view of the pattern of racial segregation which prevailed in both private and public housing in Philadelphia, the City of Philadelphia has not, under the facts of this case, met its duty of affirmatively implementing the national policy of fair housing and has violated Title VIII of the Civil Rights Act of 1968.”); *Otero*, 484 F.2d at 1133–34 (explaining that “. . . the affirmative duty placed on the Secretary of HUD by § 3608(e)(5) and through him on other agencies administering federally-assisted housing programs also requires that consideration be given to the impact of proposed public housing programs on the racial concentration in the area in which the proposed housing is to be built.”).

HUD is also reinstating the definition of “Housing Programs Serving Specified Populations” in this rule. Such programs include HUD and Federal Housing programs, such as HUD’s Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, and homeless assistance programs under McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301, *et seq.*), and housing designated under section 7 of the United States Housing Act of 1937 (42 U.S.C. 1437e) that serve specific identified populations and comply with Federal civil rights statutes and regulations. The inclusion of this definition is necessary to assure current and prospective program participants that participation in these specified Federal housing programs does not present a fair housing issue of segregation, provided that such programs are administered to comply with program regulations and applicable civil rights requirements.

Judicial precedents similarly held that, as a necessary precursor to fulfilling the ultimate obligation of pursuing actions that foster desegregation and avoid perpetuating segregation, the AFFH mandate requires program participants to assess the demographics of discrete geographic areas when conducting an analysis. For example, the Third Circuit found that the AFFH mandate requires obtaining the information necessary to make informed decisions on the effects of site selection or type selection of housing with regard to racial concentration, determining that even within the discretion afforded by the AFFH mandate, judgment must be “informed.” *See Shannon*, 436 F.2d at 820–22.

In light of these judicial precedents, this rule reinstates the definitions of “Data” and “Significant Disparities in Access to Opportunity.” In doing so, it restores a reasonable interpretation of precedents holding that the AFFH obligation requires the consideration of data such as the racial demographics of neighborhoods, other geographic areas, and housing developments, as a necessary precursor to taking meaningful action to promote integration, decrease segregation, undo racially or ethnically concentrated areas of poverty, and overcome significant disparities in access to opportunity. *See, e.g., Blackshear Res. Org. v. Housing Auth. of City of Austin*, 347 F. Supp. 1138, 1148 (W.D. Tex. 1971) (holding that both the PHA and HUD were charged with the obligation to AFFH and their decision “failed to consider that policy” and must be set aside because HUD had not considered “hard, reliable data showing the racial demography of any of these areas” despite the readily available data that could have been consulted.).

Finally, HUD is including definitions of “Protected Characteristic,” “Protected Class,” and “Disability.” The definition of “Disability” in this interim final rule, as in the 2015 AFFH Rule, is intended to be consistent with other federal civil rights laws with which program participants must comply, such as Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008. HUD incorporates by reference the definition of disability under Section 504 and the ADA as interpreted by the Attorney General, *see* 28 CFR 35.108, for purposes of the affirmatively furthering fair housing obligation under Section 808(e)(5) so as to provide consistency and clarity to HUD program participants, which are all already

bound by the same definition under those statutes.

In addition to reinstating these definitions, HUD restores the certifications that incorporate these definitions. HUD has sometimes required funding recipients to certify to compliance with certain procedures (such as creating an AI) that implement the caselaw above and has sometimes required certification to a substantive standard. HUD is not mandating any particular procedure by which program participants must engage in fair housing planning in this interim final rule, but rather is reinstating a meaningful substantive definition of AFFH.

Additionally, HUD interprets its own statutory obligation as requiring it to assist program participants with compliance, and in any event HUD’s experience teaches it that such assistance leads to better fair housing outcomes. Through this interim final rule, HUD resumes a process for providing technical assistance to program participants that engage in fair housing planning, including, in particular, the familiar AI and AFH processes.

HUD anticipates that many program participants may wish to engage in voluntary fair housing planning processes that support their AFFH certifications. Most program participants have already prepared an AI or AFH, which were required by the regulations that preceded the PCNC rule, and so HUD anticipates that many program participants may wish to continue to implement or update their AI or AFH to support their AFFH certifications. Accordingly, HUD will provide technical assistance and other support to program participants that voluntarily engage in the AI or AFH planning processes. This interim final rule does not require program participants to comply with these processes, but HUD anticipates the continued use of the AI or AFH process are ways program participants may choose to support AFFH certifications while maintaining continuity.

Program participants may also choose to support their certifications and maintain records in other meaningful ways, provided they can appropriately certify that they will AFFH, consistent with the definitions that are restored in this rule. Program participants are encouraged to seek technical assistance from HUD’s Office of Fair Housing and Equal Opportunity (FHEO) regarding any fair housing planning process.

Under its authority regarding a grantee’s certifications, HUD may review recipients’ records and documents to confirm the validity of



certifications submitted to HUD in connection with the receipt of Federal funds. HUD only intends to undertake such a review when it has reason to believe the certifications submitted are not supported by the recipients' actions. HUD expects these instances to be rare and will provide all required notice to recipients of any review to be undertaken.

Consistent with this interim final rule, HUD will separately restore the guidance and resources available for recipients' use in conducting fair housing planning until such time as HUD finalizes a new regulation to implement the statutory mandate to AFFH at 42 U.S.C. 3608(e)(5). While the AFFH Rule Guidebook was published to further the implementation of the 2015 AFFH rule, its content may assist recipients in identifying areas of analysis and strategies and actions that would overcome historic patterns of segregation, promote integration, increase access to opportunity, and ensure fair housing choice. As such, HUD will republish both the FHPG and the AFFH Rule Guidebook. It also will keep the AFFH Data and Mapping Tool (the AFFH-T) publicly available,<sup>15</sup> so that program participants have racial, socioeconomic, and other data to engage in fair housing planning.

HUD will also make available the Assessment Tool for Local Governments and the Assessment Tool for Public Housing Agencies, which previously were made available as an optional format to follow to conduct an AI, and which some program participants have chosen to use to guide their fair housing planning processes.

HUD's provision on a voluntary basis of a variety of familiar tools is intended to reduce the burden on recipients while ensuring that they have tools for fair housing planning in order to AFFH as HUD works toward an implementation scheme that will further reduce burden for recipients while bolstering fair housing outcomes.

As noted, HUD will solicit comments through a separate NPRM on how to amend the 2015 AFFH rule to achieve both burden reduction and material, positive change that affirmatively furthers fair housing.

For the reasons described in this preamble, this rule is necessary to comply with the Congressional mandate to AFFH and the statutory certifications, consistent with the directive in the FY1998 appropriations. While HUD will solicit public comments on the NPRM

through separate **Federal Register** notice, HUD here requests and encourages public comments on all matters addressed in this interim final rule.

#### IV. Findings and Certifications

##### *Executive Orders 12866 and 13563, Regulatory Planning and Review*

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order. This interim final rule has been determined to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, but not economically significant. Because nothing in this rule imposes any specific regulatory requirements and because the substantive standard that this rule reinstates is one that program participants have long followed, HUD anticipates that this rule will have no economic effects.

Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This interim final rule clarifies the obligation with which HUD grantees are already required to comply by statute. HUD, therefore, believes that this final rule would provide flexibility and freedom for HUD grantees to AFFH, consistent with the statutory mandate, and is consistent with Executive Order 13563.

##### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") 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 and 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 rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt

state law within the meaning of the Executive Order.

##### *Environmental Impact*

This final rule is a policy document that sets out fair housing and nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

##### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements for Affirmatively Furthering Fair Housing collected have previously been approved by OMB under the Paperwork Reduction Act and assigned OMB control number 2506–0117 (Consolidated Plan, Annual Action Plan & Annual Performance Report).

##### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

##### **List of Subjects**

###### *24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with

<sup>15</sup> HUD has continued to update the data used in this tool on a yearly basis. The data was last updated in summer 2020.



disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 91*

Aged; Grant programs—housing and community development; Homeless; Individuals with disabilities; Low and moderate income housing; Reporting and recordkeeping requirements.

*24 CFR Part 92*

Administrative practice and procedure; Low and moderate income housing; Manufactured homes; Rent subsidies; Reporting and recordkeeping requirements.

*24 CFR Part 570*

Administrative practice and procedure; American Samoa; Community development block grants; Grant programs—education; Grant programs—housing and community development; Guam; Indians; Loan programs—housing and community development; Low and moderate income housing; Northern Mariana Islands; Pacific Islands Trust Territory; Puerto Rico; Reporting and recordkeeping requirements; Student aid; Virgin Islands.

*24 CFR Part 574*

Community facilities; Grant programs—housing and community development; Grant programs—social programs; HIV/AIDS; Low- and moderate-income housing; Reporting and recordkeeping requirements.

*24 CFR Part 576*

Community facilities; Grant programs—housing and community development; Grant programs—social programs; Homeless; Reporting and recordkeeping requirements.

*24 CFR Part 903*

Administrative practice and procedure; Public housing; Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 5, 91, 92, 570, 574, 576, and 903 as follows:

**PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

■ 1. The authority citation for part 5, subpart A, continues to read as follows:

**Authority:** 29 U.S.C. 794, 42 U.S.C. 1437a, 1437c, 1437c–1(d), 1437d, 1437f, 1437n,

3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936; 42 U.S.C. 3600–3620; 42 U.S.C. 5304(b); 42 U.S.C. 12101 *et seq.*; 42 U.S.C. 12704–12708; Executive Order 11063, 27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652; Executive Order 12892, 59 FR 2939, 3 CFR, 1994 Comp., p. 849.

■ 2. Revise § 5.150 to read as follows:

**§ 5.150 Affirmatively Furthering Fair Housing: Purpose.**

Pursuant to the affirmatively furthering fair housing mandate in section 808(e)(5) of the Fair Housing Act, and in subsequent legislative enactments, the purpose of the Affirmatively Furthering Fair Housing (AFFH) regulations is to provide program participants with a substantive definition of the AFFH requirement, as well as to provide access to an effective planning approach to aid those program participants that wish to avail themselves of it in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.

■ 3. Revise § 5.151 to read as follows:

**§ 5.151 Affirmatively Further Fair Housing: Definitions.**

For purposes of §§ 5.150 through 5.152, the terms “consolidated plan,” “consortium,” “unit of general local government,” “jurisdiction,” and “State” are defined in 24 CFR part 91. For PHAs, “jurisdiction” is defined in 24 CFR 982.4. The following additional definitions are provided solely for purposes of §§ 5.150 through 5.152 and related amendments in 24 CFR parts 91, 92, 570, 574, 576, and 903:

*Affirmatively furthering fair housing* means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant’s activities and programs relating to housing and urban development.

*Disability.* (1) The term “disability” means, with respect to an individual:

(i) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(ii) A record of such an impairment;

or

(iii) Being regarded as having such an impairment.

(2) The term “disability” as used herein shall be interpreted consistent with the definition of such term under section 504 of the Rehabilitation Act of 1973, as amended by the Americans with Disabilities Act Amendments Act of 2008. This definition does not change the definition of “disability” or “disabled person” adopted pursuant to a HUD program statute for purposes of determining an individual’s eligibility to participate in a housing program that serves a specified population.

*Fair housing choice* means that individuals and families have the information, opportunity, and options to live where they choose without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, or disability. Fair housing choice encompasses:

(1) Actual choice, which means the existence of realistic housing options;

(2) Protected choice, which means housing that can be accessed without discrimination; and

(3) Enabled choice, which means realistic access to sufficient information regarding options so that any choice is informed. For persons with disabilities, fair housing choice and access to opportunity include access to accessible housing and housing in the most integrated setting appropriate to an individual’s needs as required under Federal civil rights law, including disability-related services that an individual needs to live in such housing.

*Housing programs serving specified populations.* Housing programs serving specified populations are HUD and Federal housing programs, including designations in the programs, as applicable, such as HUD’s Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, homeless assistance programs under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), and housing designated under section 7 of the United States Housing Act of 1937 (42 U.S.C. 1437e), that:

(1) Serve specific identified populations; and

(2) Comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively

further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

*Integration* means a condition, within the program participant's geographic area of analysis, in which there is not a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a particular type of disability when compared to a broader geographic area. For individuals with disabilities, integration also means that such individuals are able to access housing and services in the most integrated setting appropriate to the individual's needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 28 CFR part 35, appendix B (2010) (addressing 28 CFR 35.130 and providing guidance on the Americans with Disabilities Act regulation on nondiscrimination on the basis of disability in State and local government services).

*Meaningful actions* means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.

*Racially or ethnically concentrated area of poverty* means a geographic area with significant concentrations of poverty and minority populations.

*Segregation* means a condition, within the program participant's geographic area of analysis, in which there is a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a broader geographic area. For persons with disabilities, segregation includes a condition in which the housing or services are not in the most integrated setting appropriate to an individual's needs in accordance with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). (See 28 CFR part 35, appendix B (2010), addressing 25 CFR 35.130.) Participation in "housing programs serving specified populations" as defined in this section does not present

a fair housing issue of segregation, provided that such programs are administered to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs): The Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively further fair housing; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

*Significant disparities in access to opportunity* means substantial and measurable differences in access to educational, transportation, economic, and other important opportunities in a community, based on protected class related to housing.

■ 4. Add § 5.152 to read as follows:

**§ 5.152 AFFH Certification and Administration.**

(a) *Certifications.* Program participants must certify that they will comply with their obligation of affirmatively furthering fair housing when required by statutes or regulations governing HUD programs. Such certifications are made in accordance with applicable regulations. Consolidated plan program participants are subject to the certification requirements in 24 CFR part 91, and PHA Plan program participants are subject to the certification requirements in 24 CFR part 903.

(b) *Administration.* To assist program participants in carrying out their obligation of affirmatively furthering fair housing, and supporting their certifications pursuant to paragraph (a) of this section, HUD will provide technical assistance to program participants in various ways, including by:

(1) Making HUD-provided data and informational resources available, including about how to voluntarily engage in fair housing planning, such as:

(i) Analyzing fair housing data, assessing fair housing issues and contributing factors, assessing fair housing priorities and goals; taking meaningful actions to support identified goals; and taking no action that is materially inconsistent with the obligation to affirmatively further fair housing; or

(ii) Conducting an analysis to identify impediments to fair housing choice within the jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining

records reflecting the analysis and actions in this regard; or

(iii) Engaging in other means of fair housing planning that meaningfully supports this certification;

(2) Permitting a program participant to voluntarily submit its fair housing planning for HUD feedback from the responsible office; and

(3) Engaging in other forms of technical assistance.

(c) *Procedure for challenging the validity of an AFFH certification.* The procedures for challenging the validity of an AFFH certification are as follows:

(1) For consolidated plan program participants, HUD's challenge to the validity of an AFFH certification will be as specified in 24 CFR part 91.

(2) For PHA Plan program participants, HUD's challenge to the validity of an AFFH certification will be as specified in 24 CFR part 903.

(d) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Data* refers collectively to the sources of data provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this definition. When identification of the specific source of data in paragraphs (d)(1)(i) and (d)(1)(ii) is necessary, the specific source (HUD-provided data or local data) will be stated.

(i) *HUD-provided data.* The term "HUD-provided data" refers to HUD-provided metrics, statistics, and other quantified information that may be used when conducting fair housing planning. HUD-provided data will not only be provided to program participants but will be posted on HUD's website for availability to all of the public;

(ii) *Local data.* The term "local data" refers to metrics, statistics, and other quantified information, relevant to the program participant's geographic areas of analysis, that can be found through a reasonable amount of search, are readily available at little or no cost, and may be used to conduct fair housing planning.

(2) *Program participants* means:

(i) Jurisdictions and Insular Areas, as described in 570.405 and defined in 570.3, that are required to submit consolidated plans for the following programs:

(A) The Community Development Block Grant (CDBG) program (see 24 CFR part 570, subparts D and I);

(B) The Emergency Solutions Grants (ESG) program (see 24 CFR part 576);

(C) The HOME Investment Partnerships (HOME) program (see 24 CFR part 92); and

(D) The Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574).

(ii) Public housing agencies (PHAs) receiving assistance under sections 8 or

9 of the United States Housing Act of 1937 (42 U.S.C. 1437f or 42 U.S.C. 1437g).

(3) *Protected characteristics* are race, color, religion, sex, familial status, national origin, having a disability, and having a type of disability.

(4) *Protected class* means a group of persons who have the same protected characteristic; e.g., a group of persons who are of the same race are a protected class. Similarly, a person who has a mobility disability is a member of the protected class of persons with mobility disabilities.

**PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS**

■ 5. The authority citation for part 91 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3601–19, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 6. Revise § 91.225(a)(1) to read as follows:

**§ 91.225 Certifications.**

(a) \* \* \*

(1) Affirmatively furthering fair housing. Each jurisdiction is required to submit a certification, consistent with §§ 5.151 and 5.152 of this title, that it will affirmatively further fair housing.

■ 7. Revise § 91.235(c)(4) to read as follows:

(c) \* \* \*

(4) *Submissions, certifications, amendments, and performance reports.* An Insular Area grantee that submits an abbreviated consolidated plan under this section must comply with the submission, certification, amendment, and performance report requirements of § 570.440 of this title. This includes the certification that the grantee will affirmatively further fair housing pursuant to §§ 5.151 and 5.152 of this title.

■ 8. Revise § 91.325(a)(1) to read as follows:

**§ 91.325 Certifications.**

(a) \* \* \*

(1) *Affirmatively furthering fair housing.* Each State is required to submit a certification, consistent with §§ 5.151 and 5.152 of this title, that it will affirmatively further fair housing.

■ 9. Revise § 91.425(a)(1)(i) to read as follows:

**§ 91.425 Certifications.**

(a) \* \* \* (1) \* \* \* (i) *Affirmatively furthering fair housing.* Each Consortium is required to submit a certification, consistent with §§ 5.151 and 5.152 of this title, that it will affirmatively further fair housing.

**PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM**

■ 10. The authority citation for part 92 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

■ 11. Amend § 92.508 by revising paragraph (a)(7)(i)(C) to read as follows:

**§ 92.508 Recordkeeping.**

(a) \* \* \*

(7) \* \* \*

(i) \* \* \*

(B) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing pursuant to §§ 5.151, 5.152, 91.225, 91.325, and 91.425 of this title.

**PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS**

■ 12. The authority citation for part 570 continues to read as follows:

**Authority:** 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

■ 13. Revise § 570.487(b) to read as follows:

**§ 570.487 Other applicable laws and related program requirements.**

\* \* \* \* \*

(b) *Affirmatively furthering fair housing.* The Act requires the state to certify to HUD’s satisfaction that it will affirmatively further fair housing pursuant to §§ 5.151 and 5.152 of this title. The Act also requires each unit of general local government to certify that it will affirmatively further fair housing.

■ 14. In § 570.506, revise paragraph (g)(1) to read as follows:

**§ 570.506 Records to be maintained.**

\* \* \* \* \*

(g) \* \* \*

(1) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing pursuant to §§ 5.151, 5.152, 91.225, 91.325, and 91.425 of this title.

■ 15. Revise § 570.601(a)(2) to read as follows:

**§ 570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.**

(a) \* \* \*

(2) Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act.

**PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS**

■ 16. The authority citation for part 574 continues to read as follows:

**Authority:** 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

■ 17. Revise § 574.530(b) to read as follows:

**§ 574.530 Recordkeeping.**

\* \* \* \* \*

(b) Documentation of the actions the grantee has taken to affirmatively further fair housing, pursuant to §§ 5.151 and 5.152 of this title.

**PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM**

■ 18. The authority citation for part 576 continues to read as follows:

**Authority:** 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

■ 19. Amend § 576.500 by revising paragraph (s)(1)(ii) to read as follows:

**§ 576.500 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(s) \* \* \*

(1) \* \* \*

(ii) Documentation of the actions that the recipient has taken to affirmatively further fair housing, pursuant to §§ 5.151 and 5.152 of this title.

**PART 903—PUBLIC HOUSING AGENCY PLANS**

■ 20. The authority citation for part 903 continues to read as follows:

**Authority:** 42 U.S.C. 1437c; 42 U.S.C. 1437c–1; Pub. L. 110–289; 42 U.S.C. 3535d.

■ 21. Amend § 903.7 by revising paragraph (o) to read as follows:

**§ 903.7 What information must a PHA provide in the Annual Plan?**

\* \* \* \* \*

(o) *Civil rights certification.* (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 20000d–2000d–4), the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), and other applicable Federal civil rights laws. The PHA must also certify that it will affirmatively further fair housing pursuant to §§ 5.151 and 5.152 of this title.

(2) The certification is applicable to the 5-Year Plan and the Annual Plan.

\* \* \* \* \*

■ 22. Amend § 903.15 by adding paragraph (c) to read as follows:

**§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan and a PHA's Fair Housing Requirements?**

\* \* \* \* \*

(c) *Fair housing requirements.* A PHA is obligated to affirmatively further fair housing in its operating policies, procedures, and capital activities. All admission and occupancy policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and other civil rights laws and regulations and with a PHA's plans to affirmatively further fair housing. The PHA may not impose any specific income or racial quotas for any development or developments.

(1) *Nondiscrimination.* A PHA must carry out its PHA Plan in conformity with the nondiscrimination requirements in Federal civil rights laws, including title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Fair Housing Act. A PHA may not assign housing to persons in a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status, or national origin for purposes of segregating populations.

(2) *Affirmatively furthering fair housing.* A PHA's policies should be designed to reduce the concentration of tenants and other assisted persons by race, national origin, and disability. Any affirmative steps or incentives a PHA plans to take must be stated in the admission policy.

(i) HUD regulations provide that PHAs must take steps to affirmatively further fair housing. PHA policies should include affirmative steps to overcome the effects of discrimination and the effects of conditions that resulted in limiting participation of

persons because of their race, national origin, disability, or other protected class.

(ii) Such affirmative steps may include, but are not limited to, marketing efforts, use of nondiscriminatory tenant selection and assignment policies that lead to desegregation, additional applicant consultation and information, provision of additional supportive services and amenities to a development (such as supportive services that enable an individual with a disability to transfer from an institutional setting into the community), and engagement in ongoing coordination with state and local disability agencies to provide additional community-based housing opportunities for individuals with disabilities and to connect such individuals with supportive services to enable an individual with a disability to transfer from an institutional setting into the community.

(3) *Validity of certification.* (i) A PHA's certification under § 903.7(o) will be subject to challenge by HUD where it appears that a PHA:

(A) Fails to meet the affirmatively furthering fair housing requirements at 24 CFR 5.150 through 5.152

(B) Takes action that is materially inconsistent with its obligation to affirmatively further fair housing; or

(C) Fails to meet the fair housing, civil rights, and affirmatively furthering fair housing requirements in 24 CFR 903.7(o).

(ii) If HUD challenges the validity of a PHA's certification, HUD will do so in writing specifying the deficiencies, and will give the PHA an opportunity to respond to the particular challenge in writing. In responding to the specified deficiencies, a PHA must establish, as applicable, that it has complied with fair housing and civil rights laws and regulations, or has remedied violations of fair housing and civil rights laws and regulations, and has adopted policies and undertaken actions to affirmatively further fair housing, including, but not limited to, providing a full range of housing opportunities to applicants and tenants in a nondiscriminatory manner. In responding to the PHA, HUD may accept the PHA's explanation and withdraw the challenge, undertake further investigation, or pursue other remedies available under law. HUD will seek to obtain voluntary corrective action consistent with the specified deficiencies. In determining whether a PHA has complied with its certification, HUD will review the PHA's circumstances relevant to the specified deficiencies, including characteristics of the population served by the PHA;

characteristics of the PHA's existing housing stock; and decisions, plans, goals, priorities, strategies, and actions of the PHA, including those designed to affirmatively further fair housing.

■ 23. Amend § 903.23 by revising paragraph (f) to read as follows:

**§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?**

\* \* \* \* \*

(f) *Recordkeeping.* PHAs must maintain records reflecting actions to affirmatively further fair housing pursuant to §§ 5.151, 5.152, and 903.7(o) of this title.

Dated: June 4, 2021.

**Marcia L. Fudge,**

*Secretary.*

[FR Doc. 2021–12114 Filed 6–9–21; 8:45 am]

BILLING CODE 4210–67–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R01–OAR–2020–0327; FRL–10024–76–Region 1]

**Air Plan Approval; Maine; Infrastructure State Implementation Plan Requirements for the 2015 Ozone Standard and Negative Declaration for the Oil and Gas Industry for the 2008 and 2015 Ozone Standards; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) is correcting a final rule that was published in the **Federal Register** on May 13, 2021 which will be effective on June 14, 2021. The final rule approved a State Implementation Plan (SIP) revision submitted by the State of Maine which addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 ozone National Ambient Air Quality Standards (NAAQS); as well as a SIP revision containing amendments to Maine's 06–096 CMR Chapter 110, "Ambient Air Quality Standards," and SIP revisions submitted by Maine that provide the state's determination, via a negative declaration for the 2008 and 2015 ozone standards, that there are no facilities within its borders subject to EPA's 2016 Control Technique Guideline (CTG) for the oil and gas industry. This correction does not change any final action taken by EPA on May 13, 2021; this action merely provides further clarification on the amendments to the regulatory

language contained in the Code of Federal Regulations (CFR) and includes a minor change to the CFR to rearrange the location of the entry for Maine's previously approved Chapter 166 regulation.

**DATES:** This rule is effective on June 14, 2021.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2020-0327. 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, *i.e.*, 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 at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR**

**FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Ariel Garcia, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1660, email [garcia.ariel@epa.gov](mailto:garcia.ariel@epa.gov).

**SUPPLEMENTARY INFORMATION:** In FR doc. 2021-06237 at 86 FR 26181 in the issue of May 13, 2021, the following corrections to the regulatory text are made:

**§ 52.1019 [Corrected]**

■ 1. On page 26182, in the third column, in § 52.1019, in amendment 2, add the section heading immediately following the instruction to read as follows:

“§ 52.1019 Identification of plan-conditional approval.”

**§ 52.1020 [Corrected]**

■ 2. On page 26183, in the third column, in § 52.1020, in amendment 3, correct the instruction to read as follows:

■ “3. In § 52.1020(c) amend the table by:  
■ a. Revising the entry for “Chapter 110”;

■ b. Adding entries for “38 MRSA § 341-A(3)(D)” and “38 MRSA § 341-C(2) and 341-C(8)” following the entry for “38 MRSA Section 341-C(7)”.

The revisions and additions read as follows:”

■ 3. On page 26183, in the first column, in § 52.1020, in amendment 4, correct the instruction to read as follows:

■ “4. In § 52.1020(e), amend the table by adding entries for “Submittal to meet Clean Air Act Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standard”; “Conflict of Interest Statute”; and “Negative declaration for the 2016 Control Techniques Guideline for the Oil and Natural Gas Industry for the 2008 and 2015 ozone standards” at the end of the table, to read as follows:”

Dated: June 2, 2021.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

[FR Doc. 2021-11958 Filed 6-9-21; 8:45 am]

**BILLING CODE 6560-50-P**

# Proposed Rules

Federal Register

Vol. 86, No. 110

Thursday, June 10, 2021

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

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 272 and 273

[FNS–2018–0037]

RIN 0584–AE62

#### Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP); Withdrawal

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This document informs the public that the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) is withdrawing the proposed rule titled *Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)* that published in the **Federal Register** on July 24, 2019. This rule would have refined how receipt of the Temporary Assistance for Needy Families (TANF) benefits may confer categorical eligibility for SNAP. The rule would have also required State agencies to include in their SNAP State Plan of Operations all non-cash TANF benefits and certain cash TANF benefits that confer categorical eligibility. After reviewing and considering the comments received, the proposed rule is being withdrawn.

**DATES:** As of June 10, 2021, the proposed rule published on July 24, 2019, at 84 FR 35570, is officially withdrawn.

**ADDRESSES:** SNAP Program Development Division, Food and Nutrition Service, USDA, 1320 Braddock Place, Alexandria, Virginia 22314.

**FOR FURTHER INFORMATION CONTACT:** Program Design Branch, Program Development Division, FNS, 1320 Braddock Place, Alexandria, Virginia 22314. [SNAPPDBRules@usda.gov](mailto:SNAPPDBRules@usda.gov).

**SUPPLEMENTARY INFORMATION:** The decision to withdraw the proposed rule

and maintain the current categorical eligibility regulations is authorized by section 5(a) of the Food and Nutrition Act of 2008, as amended (the Act), which provides that households in which each member receives benefits under a State program funded under part A of Title IV of the Social Security Act (SSA) (also known as Temporary Assistance for Needy Families (TANF) block grants)<sup>1</sup> shall be categorically eligible for the Supplemental Nutrition Assistance Program (SNAP). This action withdraws a proposed rule published in the **Federal Register** on July 24, 2019, (84 FR 35570), which would have revised how receipt of TANF benefits may confer categorical eligibility for SNAP. Specifically, the proposed rule would have limited the TANF “benefits” that may confer categorical eligibility to “ongoing” and “substantial” benefits. The proposed rule defined “ongoing” benefits as those that a household receives or is authorized to receive for a period of at least six months and “substantial” benefits as those valued at a minimum of \$50 per month. The proposed rule also limited the types of non-cash TANF benefits conferring categorical eligibility to those that focus on subsidized employment, work supports, and childcare. Finally, the proposed rule would have required State agencies to inform FNS of all non-cash TANF benefits that confer categorical eligibility. The proposed rule would have cost \$2.314 billion in administrative expenses between 2019–2023 and resulted in 3.1 million individuals in 1.7 million households losing SNAP eligibility in Fiscal Year 2020.

During the proposed rule’s 60-day comment period, nearly 158,000 comments were received. All the comments may be viewed by going to <http://www.regulations.gov> and searching for public submissions under docket number FNS–2018–0037. The comments came from a broad range of stakeholders and generally opposed the

<sup>1</sup> State programs funded under part A of Title IV of the SSA include programs funded by Federal TANF block grant funds, as well as programs funded by State maintenance-of-effort (MOE) dollars that allow a State to receive Federal TANF block grant funds. For simplicity, this notice of withdrawal will refer to all State programs funded under part A of Title IV of the SSA as “TANF-funded programs,” and to benefits from such programs as “TANF benefits.”

proposed rule. Commenters opposed the rule largely due to concerns about the potential impacts on food insecurity, particularly among children, veterans, individuals with disabilities, and the elderly. Others expressed concerns that the proposed rule would discourage savings and make it more difficult for households to become financially self-sufficient and have adverse economic impacts for communities. Commenters largely opposed the proposed ongoing and substantial criteria, arguing that the criteria would have undermined the Department’s stated goal of the supporting self-sufficiency, in addition to creating administrative burdens for State agencies and unnecessary barriers to program participation for applicants. Numerous commenters expressed concerns about the legality of the framework of the proposed rule.

Commenters claimed the Department did not provide valid justifications for the changes proposed, identify any evidence to support the need for a regulatory change, or adequately explain its decision-making. Many commenters argued that the proposed rule was arbitrary and capricious.

More specifically, many commenters responded to concerns raised in the proposed rule regarding the impact of expanded categorical eligibility on SNAP program integrity. These commenters disputed the proposed rule’s assertion that States have abused the flexibility offered by categorical eligibility, writing that States have been responsible and methodical stewards of SNAP. Commenters also wrote that the proposed changes went well beyond shoring up the integrity of the program and were intended to reduce SNAP benefits. Several commenters suggested that the program integrity concerns cited in the proposed rule were unwarranted since all households are required to submit and verify income and other eligibility information to determine the SNAP benefit allotment.

#### Withdrawal

After reviewing and considering the comments received, the Department has determined that the proposed rule to revise categorical eligibility should not be finalized. In withdrawing this proposed rule, the Department reaffirms its longstanding categorical eligibility policy, codified in regulations at 7 CFR 273.2(j). The Department has

determined that the proposed revisions did not sufficiently justify the impact on the estimated 1.7 million SNAP households that would have lost eligibility under the rule and did not adequately mitigate the disproportionate impact the rule would have had on households with an elderly member. Additionally, the Department has determined that the proposed changes and concerns raised regarding program integrity were not adequately supported by data and do not justify the costs to State agencies of implementing the change.

In withdrawing this proposed rule, the Department reaffirms the purpose of categorical eligibility to simplify the SNAP application process for both SNAP State agencies and households by reducing the amount of information that must be verified if a household has already been determined eligible to receive benefits from another assistance program specified in Sec. 5(a) of the Act. Beginning in 2009, the Department proactively encouraged States to implement expanded categorical eligibility policies in order to increase SNAP participation and reduce State administrative burdens. The Department acknowledges that the flexibility afforded by expanded categorical eligibility policies are critical to reducing the burden on needy households and State agencies administering benefit programs.

The Department agrees with the issues raised by many commenters and no longer believes that the limitations the proposed rule would have put on categorical eligibility are appropriate. Accordingly, the proposed rule to revise categorical eligibility for SNAP published in the **Federal Register** on July 24, 2019, (84 FR 35570) is hereby withdrawn.

**Cynthia Long,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2021-12183 Filed 6-9-21; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

[EERE-2017-BT-STD-0021]

RIN 1904-AD90

### Energy Conservation Program: Energy Conservation Standards for Unfired Hot Water Storage Tanks

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notification of proposed determination and request for comment.

**SUMMARY:** The Energy Policy and Conservation Act, as amended (EPCA), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including unfired hot water storage tanks (UFHWSTs). EPCA also requires the U.S. Department of Energy (DOE or the Department) to periodically determine whether more-stringent, amended standards would result in significant additional conservation of energy, be technologically feasible, and be economically justified. After carefully considering the available market and technical information for this equipment, DOE has tentatively concluded in this document that it lacks clear and convincing evidence that more-stringent standards for UFHWSTs would save a significant additional amount of energy and would be economically justified. As such, DOE has initially determined that energy conservation standards for UFHWSTs do not need to be amended. DOE requests comment on this notification of proposed determination (NOPD), as well as the associated analyses and results.

**DATES:** *Meeting:* DOE will hold a webinar on Tuesday, July 13, 2021, from 12:00 p.m. to 4:00 p.m. See section VII, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

*Comments:* Written comments and information are requested and will be accepted on or before August 9, 2021.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address:

*UnfiredCommercialWH2017STD0021@ee.doe.gov*. Include docket number EERE-2017-BT-STD-0021 and/or RIN number 1904-AD90 in the subject line of the message. Submit electric comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption. No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VII (Public Participation) of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal

mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586-1445 to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submissions, including postal mail and hand delivery/courier.

*Docket:* The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at <https://www.regulations.gov>. All documents in the docket are listed in the <https://www.regulations.gov> index. However, some documents listed in the index, such as information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: <https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0021>. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII, “Public Participation,” for further information on how to submit comments through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Catherine Rivest, 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) 586-7335. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-5827. Email: [Eric.Stas@hq.doe.gov](mailto:Eric.Stas@hq.doe.gov).

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

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## I. Synopsis of the Proposed Determination

Title III, Part C<sup>1</sup> of EPCA,<sup>2</sup> established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) This equipment includes UFHWSTs, the subject of this NOPD. (42 U.S.C. 6311(1)(K))

Pursuant to EPCA, DOE is triggered to consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) amends the standard levels or design requirements prescribed in ASHRAE Standard 90.1, “Energy Standard for Buildings Except Low-Rise Residential Buildings,” (ASHRAE Standard 90.1). Under a separate provision of EPCA, DOE is required to review the existing energy conservation standards for those types of covered equipment subject to ASHRAE Standard 90.1 every six 6 years to determine whether those standards need to be amended. (42 U.S.C. 6313(a)(6)(A)–(C)) DOE is conducting this review of the energy conservation standards for UFHWSTs under EPCA’s six-year-lookback authority. (42 U.S.C. 6313(a)(6)(C))

For this proposed determination, DOE analyzed UFHWSTs subject to standards as specified in the Code of Federal

Regulations (CFR) at 10 CFR 431.110. DOE first analyzed the technological feasibility of more efficient UFHWSTs. For those UFHWSTs for which DOE determined higher standards to be technologically feasible, DOE estimated energy savings that would result from potential amended energy conservation standards. DOE also considered whether potential energy conservation standards would be economically justified. As discussed in the following sections, DOE has initially determined that it lacks clear and convincing evidence that amended energy conservation standards for UFHWSTs would result in significant additional conservation of energy or be economically justified.

Based on the results of these analyses, summarized in section V of this document, DOE has tentatively determined that current energy conservation standards for UFHWSTs do not need to be amended.

## II. Introduction

The following section briefly discusses the statutory authority underlying this proposed determination, as well as some of the historical background relevant to the establishment of energy conservation standards for UFHWSTs.

### A. Authority

EPCA, Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619, Title IV, § 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes UFHWSTs, the subject of this document. (42 U.S.C. 6311(1)(K))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically 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).

Federal energy conservation requirements for covered equipment established under EPCA generally

<sup>1</sup> For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

<sup>2</sup> 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).

supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6297(d); 42 U.S.C. 6316(a); 42 U.S.C. 6316(b)(2)(D))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of covered equipment. (42 U.S.C. 6314) Specifically, EPCA requires that if a test procedure referenced in ASHRAE Standard 90.1 is updated, DOE must update its test procedure to be consistent with the amended test procedure in ASHRAE Standard 90.1, unless DOE determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure is not reasonably designed to produce test results that reflect the energy efficiency, energy use, or estimated operating costs of the covered ASHRAE equipment during a representative average use cycle. In addition, DOE must determine that the amended test procedure is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2) and (4)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures in the **Federal Register** and offer the public an opportunity (of not less than 45 days duration) to present oral and written comments on them. (42 U.S.C. 6314(b)) In contrast, 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))

Manufacturers of covered equipment must use the Federal test procedures as the basis for the following: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) when making representations to the public regarding the energy use or efficiency of such equipment. (42 U.S.C. 6314(d)) Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. It is noted that DOE does not prescribe a test procedure for UFHWSTs, as the current Federal standard is an insulation design requirement of a

minimum R-value of R-12.5. 10 CFR 431.110.

EPCA contains mandatory energy conservation standards for commercial heating, air-conditioning, and water-heating equipment. (42 U.S.C. 6313(a)) Specifically, the statute sets standards for small, large, and very large commercial package air conditioning and heating equipment, packaged terminal air conditioners and packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and UFHWSTs. *Id.* In doing so, EPCA established Federal energy conservation standards that generally corresponded to the levels in the ASHRAE Standard 90.1 in effect on October 24, 1992 (*i.e.*, ASHRAE Standard 90.1-1989).

If ASHRAE Standard 90.1 is amended with respect to the standard levels or design requirements applicable under that standard for certain commercial equipment, including UFHWSTs, not later than 180 days after the amendment of the standard, DOE must publish in the **Federal Register** for public comment an analysis of the energy savings potential of amended energy efficiency standards. (42 U.S.C. 6313(a)(6)(A)(i)) DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless clear and convincing evidence supports a determination that adoption of a more-stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii))

To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

- (1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;
- (2) The savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses of the products likely to result from the standard;
- (3) The total projected amount of energy savings likely to result directly from the standard;
- (4) Any lessening of the utility or the performance of the products likely to result from the standard;
- (5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;
- (6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6313(a)(6)(B)(ii) and (C)(i); 42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i))

If DOE adopts as a national standard the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such a standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish the more-stringent standard not later than 30 months after publication of the revised ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(B)(i))

EPCA also requires that every six years DOE shall evaluate the energy conservation standards for each class of certain covered commercial equipment, including UFHWSTs, and publish either a notice of determination that the standards do not need to be amended, or a notice of proposed rulemaking (NOPR) that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(i)) EPCA further provides that, not later than three years after the issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(iii)(II)) DOE must make the analysis on which the determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6313(a)(6)(C)(ii)) Further, a determination that more-stringent standards would: (1) Result in significant additional conservation of energy and (2) be both technologically feasible and economically justified must be supported by clear and convincing evidence. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)) DOE is publishing this NOPD in satisfaction of the 6-year review requirement in EPCA, having initially determined that DOE lacks clear and convincing evidence that amended standards for UFHWSTs would result in significant additional conservation of energy and be economically justified.

## B. Background

### 1. Current Standards

The initial Federal standards for UFHWSTs, established by EPCA, corresponded to the efficiency levels

contained in ASHRAE Standard 90.1–1989. On January 12, 2001, DOE amended the standards for UFHWSTs to be equivalent to the efficiency level in ASHRAE Standard 90.1 as revised in October 1999. 66 FR 3336 (January 2001 final rule). The January 2001 final rule established an insulation design requirement of a minimum R-value of R–12.5 for all UFHWSTs. 66 FR 3336, 3356 (Jan. 12, 2001). This remains the current Federal standard (and the standard level specified in the most recent version of ASHRAE Standard

90.1). The current standard is located at 10 CFR 431.110.

2. History of Standards Rulemakings for UFHWSTs

As noted previously, the standards for UFHWSTs were most recently amended in the January 2001 final rule. EPCA requires DOE to evaluate the applicable energy conservation standard for UFHWSTs every 6 years to determine whether it needs to be amended. (42 U.S.C. 6313(a)(6)(C)(i)) Thus, DOE published a request for information (RFI) on August 9, 2019, which

identified various issues and sought to collect data and information to inform its determination, consistent with its obligations under EPCA, as to whether the UFHWST standards need to be amended (the August 2019 RFI). 84 FR 39220.

DOE received five comments in response to the August 2019 RFI from the interested parties listed in Table II.1. Discussion of the relevant comments provided by these organizations and DOE’s responses are provided in the appropriate sections of this document.

TABLE II.1—INTERESTED PARTIES PROVIDING WRITTEN COMMENTS ON THE AUGUST 2019 RFI

Name	Abbreviation	Commenter type
Appliance Standards Awareness Project and Natural Resources Defense Council.	ASAP and NRDC .....	Efficiency Organizations.
Air-Conditioning, Heating, & Refrigeration Institute .....	AHRI .....	Trade Association.
Pacific Gas and Electric Company (PG&E), Sand Diego Gas and Electric (SDG&E), Southern California Edison (SCE).	CA IOUs .....	Investor-Owned Utilities.
A.O. Smith Corporation .....	A.O. Smith .....	Manufacturer.
Bradford White Corporation .....	BWC .....	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.<sup>3</sup>

III. General Discussion

DOE developed this proposed determination after a review of the UFHWST market, including product literature and product listings in the DOE Compliance Certification Management System (CCMS) database. DOE also considered written comments, data, and information from interested parties that represent a variety of interests. This notice addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing new or amended energy conservation standards, DOE typically divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features that justify differing standards. For UFHWSTs, the current standard at 10 CFR 431.110 is applicable to a single equipment class covering all UFHWSTs, which is consistent with the standard and structure in ASHRAE Standard 90.1. DOE’s regulations define “unfired hot water storage tank” as a tank used

to store water that is heated externally, and that is industrial equipment. 10 CFR 431.102. The scope of coverage is discussed in further detail in section IV.A.1 of this NOPD.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE’s adoption and amendment of test procedures. (42 U.S.C. 6314(a)) As a general matter, manufacturers of covered ASHRAE equipment must use these test procedures to certify to DOE that their equipment complies with energy conservation standards and to quantify the efficiency of their equipment. (42 U.S.C. 6316(b); 42 U.S.C. 6296) DOE’s current energy conservation standards for UFHWSTs are expressed in terms of a minimum R-value for tank insulation. (See 10 CFR 431.110.)

DOE does not prescribe a test procedure for UFHWSTs; however, DOE’s regulations define “R-value” as the thermal resistance of insulating material as determined using either ASTM International (ASTM) C177–13, “Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus,” or ASTM C518–15, “Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus” and expressed in (°F ft<sup>2</sup> h/Btu). 10 CFR 431.102.

In response to the August 2019 RFI, DOE received several comments encouraging DOE to consider a

performance-based test procedure for UFHWSTs. ASAP and NRDC referenced a test procedure notice of proposed rulemaking (NOPR) published in the **Federal Register** on May 9, 2016 (81 FR 28588) (May 2016 CWH TP NOPR) in which DOE proposed, among other things, a standby loss test for UFHWSTs, and a final rule for the test procedure for commercial water heating (CWH) equipment published in the **Federal Register** on November 10, 2016 (81 FR 79261), in which DOE suggested that it would address comments received in response to the May 2016 CWH TP NOPR in a separate rulemaking notice. These commenters encouraged DOE to review and finalize the performance-based test procedure for UFHWSTs before proceeding with a UFHWST standards rulemaking, in order to not forgo potential additional energy savings that could come from incorporating standby losses and/or other changes to the UFHWST test procedure. (ASAP and NRDC, No. 7 at pp. 1–2) Similarly, the CA IOUs stated that they believe the current R–12.5 insulation requirement limits consumer choice and does not encourage design innovation. They likewise encouraged DOE to adopt a performance-based metric, which they believe would lead to additional energy savings. The CA IOUs analyzed standby losses for commercial storage water heaters in the AHRI Directory of Certified Product Performance and noted a wide range of performance. They stated that this suggests the potential for energy savings

<sup>3</sup> The parenthetical reference provides a reference for information located in the docket. (Docket No. EERE–2017–BT–STD–0021, which is maintained at <https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0021>). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

opportunities for UFHWSTs, if storage water heater tanks are representative of UFHWSTs. Commenting more specifically, the CA IOUs encouraged DOE to consider the thermal losses through uninsulated ports. (CA IOUs, No. 3 at pp. 1–3)

In contrast to these comments, BWC recommended that DOE maintain the requirements for UFHWSTs in terms of insulation level, stating that performance testing for UFHWSTs would be overly burdensome, especially considering the relatively small and customized nature of the marketplace. BWC also expressed concerns that a test procedure change, and ultimately an energy conservation standards change, could have anti-competitive impacts on the UFHWST market. (BWC, No. 5 at pp. 1–3) AHRI also recommended maintaining the current prescriptive design requirement (a minimum insulation requirement of R–12.5), rather than a performance-based metric, stating that the prescriptive approach is simpler. (AHRI, No. 6 at p. 2)

As discussed in section II.A of this document, DOE is publishing this NOPD in satisfaction of the 6-year-lookback review requirement in EPCA, which requires DOE to evaluate the energy conservation standards for certain commercial equipment, including UFHWSTs. Under that provision, DOE must publish either a notice of determination that the standards do not need to be amended, or a NOPR that includes proposed amendments to the energy conservation standards (proceeding to a final rule, as appropriate) every six years. (42 U.S.C. 6313(a)(6)(C)(i)) Because test procedure amendments to adopt a standby loss requirement were not finalized for UFHWSTs, for this analysis of potential amended standards, DOE has only considered potential amended standards based on updating the prescriptive design requirement for insulation R-value.

### C. Technological Feasibility

#### 1. General

In evaluating potential amendments to energy conservation standards, DOE first conducts a market and technology assessment to survey all current technology options in products on the market and prototype designs that could improve the efficiency of the products or equipment that are the subject of the determination. This list of technology options for consideration is developed in consultation with manufacturers, design engineers, and other interested parties. DOE then conducts a screening analysis for the technologies identified,

and, as a first step, determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available equipment or in working prototypes to be technologically feasible. *See generally* 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, section 6(c)(3)(i) and 7(b)(1).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on equipment utility or availability; (3) adverse impacts on health or safety; and (4) unique-pathway proprietary technologies. *See generally* 10 CFR 431.4; 10 CFR part 430, subpart C, appendix A, sections 6(c)(3)(ii)–(v) and 7(b)(2)–(5). Section IV.A.3 of this document discusses the results of the screening analysis for UFHWSTs, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this proposed determination.

#### 2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered equipment, as part of its analysis, the Department determines the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (max-tech) improvements in energy efficiency for UFHWSTs, using the design parameters for the most efficient equipment available on the market or in working prototypes. The max-tech levels that DOE determined for this analysis are described in section IV.B of this proposed determination.

### D. Energy Savings

#### 1. Determination of Savings

For each efficiency level (EL) evaluated, DOE projected energy savings from application of the EL to the UFHWSTs purchased in the 30-year period that begins in the assumed year of compliance with the potential amended standards (2025–2054). The savings are measured over the entire lifetime of the UFHWSTs purchased in the previous 30-year period. DOE quantified the energy savings attributable to each EL as the difference

in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for equipment would likely evolve in the absence of amended energy conservation standards. DOE used a simplified National Impacts Analysis (NIA) spreadsheet model to estimate national energy savings (NES) from potential amended or new standards for UFHWSTs. The simplified NIA for this analysis is to ascertain if potential efficiency improvements for UFHWSTs meet the required significance of savings described in section III.D.2 of this document; however, it does not estimate the net present value (NPV) to the Nation of these savings that is typically performed as part of the NIA. The simplified NIA spreadsheet model (described in section IV.F of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by equipment at the locations where it is used.

#### 2. Significance of Savings

In determining whether amended standards are needed for covered equipment addressed by ASHRAE Standard 90.1, DOE must consider whether such standards would result in significant additional conservation of energy.<sup>4</sup> (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II))

EPCA defines “energy efficiency” as the ratio of the useful output of services from an article of industrial equipment to the energy use of such article, measured according to the Federal test procedures. (42 U.S.C. 6311(3)) EPCA defines “energy use” as the quantity of energy directly consumed by an article of industrial equipment at the point of use, as measured by the Federal test procedures. (42 U.S.C. 6311(4)) Given this context, DOE relies on site energy as the appropriate metric for evaluating the significance of energy savings.

<sup>4</sup> In setting a more-stringent standard for ASHRAE equipment, DOE must have “clear and convincing evidence” that doing so “would result in significant additional conservation of energy,” in addition to being technologically feasible and economically justified. 42 U.S.C. 6313(a)(6)(A)(ii)(II). This language indicates that Congress had intended for DOE to ensure that, in addition to the savings from the ASHRAE standards, DOE’s standards would yield additional energy savings that are significant. In DOE’s view, this statutory provision shares the requirement with the statutory provision applicable to other covered non-ASHRAE equipment that “significant conservation of energy” must be present (42 U.S.C. 6295(o)(3)(B); 42 U.S.C. 6316(a)), but it must also be supported with “clear and convincing evidence” to permit DOE to set a more stringent requirement than ASHRAE.

### E. Economic Justification

#### 1. Specific Criteria

As noted previously, EPCA provides seven factors to be considered in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII)) The following sections provide an overview of each of those seven factors.

##### a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE typically conducts a manufacturer impact analysis (MIA). In conducting a MIA, DOE uses an annual cash-flow approach to compare the quantitative impacts between the no-new-standards and the amended standards cases. The industry-wide impacts typically analyzed include: (1) Industry net present value (INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income, and (4) other measures of impact, as appropriate. However, DOE is not proposing amended standards for UFHWSTs, and, therefore, this proposed determination would have no cash-flow impacts on manufacturers. Accordingly, as discussed further in section IV.G of this document, DOE did not conduct an MIA for this NOPD.

For individual consumers, measures of economic impact include the changes in the life-cycle cost (LCC) and payback period (PBP) associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also typically calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also typically evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard. However, as discussed in section V.A.2 of this document, due to significant uncertainties regarding the costs of alterations to doorways and mechanical rooms (which may be required in certain replacement installations in order to get an UFHWST to its installation destination if additional insulation thickness makes the UFHWST too large for existing structures to accommodate) and the lack of data indicating the likelihood of such alterations being required, any analysis conducted by DOE regarding the LCC or PBP would be of limited value because of the lack of data and high degree of uncertainty of the inputs to those analyses. Therefore, DOE did not

estimate the NPV of consumer costs and benefits.

##### b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6313(a)(6)(B)(ii)(II)) DOE typically conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of equipment (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the equipment. The LCC analysis requires a variety of inputs, such as equipment prices, energy consumption, energy prices, maintenance and repair costs, equipment lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as equipment lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of more-efficient equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect. This type of calculation is known as a “simple” payback period because it does not take into account changes in operating expenses over time or the time value of money (*i.e.*, the calculation is done at an effective discount rate of zero percent). Payback periods greater than the life of the equipment indicate that the increased total installed cost is not recovered by the reduced operating expenses.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the equipment in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. As discussed in section IV.D of this document, DOE did not conduct an LCC and PBP analysis for this NOPD because of the lack of data and high degree of uncertainty of the inputs to those

analyses meant that the outputs would be of little value.

##### c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for amending an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(III)) As discussed in section IV.F of this document, DOE uses the NIA spreadsheet models to project national energy savings.

##### d. Lessening of Utility or Performance of Equipment

In establishing equipment classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6313(a)(6)(B)(ii)(IV)) Because DOE is not proposing standards for UFHWSTs, the Department has tentatively concluded that this proposed determination would not reduce the utility or performance of UFHWSTs.

##### e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6313(a)(6)(B)(ii)(V)) Because DOE is not proposing standards for UFHWSTs, DOE did not transmit a copy of its proposed determination to the Attorney General for anti-competitive review.

##### f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6313(a)(6)(B)(ii)(VI)) Because DOE has tentatively concluded that it lacks clear and convincing evidence that amended standards for UFHWSTs would result in significant additional conservation of energy or be economically justified, DOE did not conduct a utility impact analysis or emissions analysis for this NOPD.

##### g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(VII)) To the extent DOE

identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under “other factors.”

#### IV. Methodology and Discussion of Related Comments

This section addresses DOE’s consideration of the statutory factors and the analyses that DOE has performed for this proposed determination with regard to UFHWSTs. Separate subsections address each component of the factors for DOE’s consideration, as well as corresponding analyses to the extent conducted. DOE used a spreadsheet tool to estimate the impact of potential energy conservation standards. This spreadsheet uses inputs from the energy use analysis and shipments projections and calculates a simplified NES expected to result from potential energy conservation standards.

##### A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, manufacturers, market characteristics, and technologies used in the equipment. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. DOE also conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in its analyses, and to identify key issues or concerns. These interviews were conducted under non-disclosure agreements (NDAs), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE’s responses throughout the rest of this document.

The subjects addressed in the market and technology assessment for this proposed determination include: (1) A determination of the scope and equipment classes; (2) manufacturers and industry structure; (3) shipments information, (4) market and industry trends, and (5) technologies or design options that could improve the energy efficiency of UFHWSTs. The key findings of DOE’s market assessment are summarized in the following subsections.

##### 1. Scope of Coverage and Equipment Classes

In this analysis, DOE relied on the definition of UFHWSTs in 10 CFR 431.102, which defines an UFHWST as a tank used to store water that is heated externally, and that is industrial equipment. Any equipment meeting the definition of an UFHWST is included in DOE’s scope of coverage. UFHWSTs are not currently divided into equipment classes (*i.e.*, there is a single equipment class covering all UFHWSTs).

In the August 2019 RFI, DOE requested comment on whether the current definition of UFHWSTs requires any revisions, and whether any subcategory divisions should be added. 84 FR 39220, 39224 (August 9, 2019). In response, BWC generally supported the definition of UFHWSTs as presented in the August 2019 RFI (*i.e.*, the current regulatory definition). Similarly, BWC also stated that it does not believe any subcategory definitions should be created and that there is not an appropriate way to divide UFHWSTs into separate equipment classes. (BWC, No. 5 at pp. 1–2) The CA IOUs encouraged DOE to ensure that any revised definitions of UFHWSTs maintain the current scope of coverage, and suggested that DOE should not consider establishing new equipment classes that are not currently available in the market. The CA IOUs also recommended that equipment class differentiations should be based on performance-related features that are “accessible to the layperson and is based on user operation.”<sup>5</sup> (CA IOUs, No. 3 at pp. 1–3)

In this proposed determination, absent any indication that the scope of UFHWSTs as currently defined would benefit from amendment, DOE is not proposing any changes to the definition of UFHWSTs. Similarly, because DOE does not have an indication that capacity or other performance characteristic justifies a different standard level, and because commenters did not provide any such indication, DOE is not proposing to divide UFHWSTs into separate equipment classes in this NOPD. Therefore, the analysis for this NOPD was conducted

<sup>5</sup> The terminology “accessible to the layperson and is based on user operation” used by CA IOUs is quoted from a discussion of product utility written by DOE in the context of differentiating product classes in a March 12, 2015 notice of proposed rulemaking for energy conservation standards for residential non-weatherized gas furnaces and mobile home furnaces. 80 FR 13120, 13137. The full document is available at: <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0032> (Last accessed: July 22, 2020).

for the existing single equipment class covering all UFHWSTs.

##### 2. Technology Options

In the August 2019 RFI, DOE identified several technology options that would be expected to improve the efficiency of UFHWSTs. 84 FR 39220, 39225 (August 9, 2019). These technology options were based on manufacturer equipment literature and publicly-available technical literature. Specifically, the technologies identified in the August 2019 RFI included the following:

- Improved insulation R-value
  - Increased insulation thickness
  - Foam insulation
  - Advanced insulation types
    - Aerogel
    - Vacuum panels
    - Inert gas-filled panels
- Pipe and fitting insulation
- Greater coverage of tank surface area with foam insulation (*e.g.*, tank bottom)

##### 3. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

###### (1) *Technological feasibility.*

Technologies that are not incorporated in commercial equipment or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial equipment could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on equipment utility or equipment availability.* If it is determined that a technology would have significant adverse impact on the utility of the equipment to significant subgroups of consumers or would result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option utilizes

proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further.

10 CFR part 430, subpart C, appendix A, sections 6(c)(3) and 7(b). In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

#### a. Screened-Out Technologies

In response to the August 2019 RFI, DOE received several comments related to the suggested technology options. A.O. Smith stated that the technologies used to increase the efficiency of UFHWSTs are limited to changes in installation thickness, location, and materials. (A.O. Smith, No. 8 at p. 2) BWC stated that many of the technologies listed would be very difficult to apply to UFHWSTs due to the wide variety of tank sizes, configurations, and fittings. Additionally, BWC stated that the majority of the technologies identified would present significant manufacturability issues due to the variability of tank configurations and fittings, and that increasing insulation thickness and/or changing to another insulating solutions could present issues with fittings that would not occur otherwise. BWC also asserted that the technology options listed could increase the fragility of tanks, which could cause difficulties in moving the tanks to their final installation location. (BWC, No. 5 at p. 2) As discussed in section IV.A of this document, DOE also conducted interviews with manufacturers. During these interviews, which were conducted under NDAs, manufacturers made statements similar to those comments submitted by BWC in response to the August 2019 RFI.

In response to these comments, DOE acknowledges that requiring use of advanced insulation types (such as vacuum panels or aerogels) could necessitate an extremely difficult change to the UFHWST manufacturing process due to the rigid nature of these materials and the high degree of customization and ports on UFHWSTs. Applying these materials closely around ports and configuring them to all tank shapes and setups (e.g., number of ports, port locations) may not be possible where tight curvatures would be required and/or due to the high level of customization of UFHWSTs. Additionally, DOE is not aware of equipment on the market that incorporate aerogels, vacuum panels, or inert gas-filled panels at the time of this

analysis. Therefore, in the analysis for this NOPD, DOE did not consider any advanced insulation types as a technology option to increase the insulation R-value for UFHWSTs.

To explain what technologies are commonly used, BWC stated that most manufacturers use polyurethane foam to achieve the minimum R–12.5 requirement, although high density fiberglass may be applied in certain areas where it is difficult to apply foam. (BWC, No. 5 at p. 2) Relatedly, A.O. Smith stated that certain technology options proposed by DOE, such as insulation on tank bottoms, would be impractical to implement because bottom mounted drain connections must be kept accessible. (A.O. Smith, No. 8 at p. 2) AHRI commented that technologies such as pipe insulation cannot be pre-configured by the manufacturer for installation in the field. (AHRI, No. 6 at p. 2)

As suggested by BWC, and supported by DOE's review of publicly-available manufacturer information, polyurethane foam is the most commonly used type of insulation for meeting the minimum insulation requirement, but fiberglass and/or Styrofoam are often used in specific regions (e.g. tank tops or bottoms, or regions around ports) where doing so could limit access to ports or be impractical to manufacture. For its analyses, DOE has estimated energy losses based on tanks being covered primarily with polyurethane foam, but the agency has also included several regions with alternative insulation materials. Therefore, DOE included a minimum amount of insulation around pipes and fittings in its analysis of baseline equipment, but it did not consider requiring different insulation materials in these regions. Likewise, DOE did not consider additional insulation coverage around pipes and fittings as a technology option for the analysis.

#### b. Remaining Technologies

Ultimately, after reviewing all of the proposed technologies, DOE did not screen out improved insulation R-value due to increased polyurethane foam thickness, so the Department included this as a design option in the engineering analysis. DOE determined that this technology option is technologically feasible because it only involves an increase in thickness of the same insulation material that is currently commonly used on UFHWSTs, and can be achieved with the same processes that are currently being used in commercially-available equipment or working prototypes (e.g., fabricating jackets or foaming).

#### B. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of UFHWSTs at different levels of reduced heat loss (“efficiency levels”).<sup>6</sup> This relationship serves as the basis for the cost-benefit calculations for commercial consumers, manufacturers, and the Nation. There are typically two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (i.e., the “efficiency analysis”) and the determination of equipment cost at each efficiency level (i.e., the “cost analysis”). In determining the performance of higher-efficiency equipment, DOE considers technologies and design option combinations not eliminated by the screening analysis. DOE then typically estimates the manufacturing production cost (MPC) at the baseline and the change in MPC associated with reducing the heat loss of equipment above the baseline, up to the max-tech efficiency level for each equipment class. The typical output of the engineering analysis is a set of cost-efficiency “curves” that are used in downstream analyses (i.e., the LCC and PBP analyses and the NIA). However, for the reasons discussed in IV.B.3 of this document, the cost analysis was not performed for this NOPD.

##### 1. Efficiency Levels for Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) Relying on observed efficiency levels in the market (i.e., the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (i.e., the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing equipment (in other words, based on the range of efficiencies and efficiency level “clusters” that already exist on the market, without regard to the specific design options used to achieve those levels). Using the design-option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements resulting from implementation of specific design

<sup>6</sup> While the UFHWSTs standard addresses heat loss through establishing a minimum level of insulation, for the purpose of this analysis, the levels of improvement are referred to generally as “efficiency levels.”



options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. In this rulemaking, DOE is adopting a design-option approach because there are very few models of UFHWSTs currently on the market that are marketed with higher insulation levels than the current baseline requirement of R-12.5.

Based on its review of publicly-available equipment information and feedback from manufacturers, DOE had tentatively determined that 2 inches of polyurethane foam insulation is needed to meet the current insulation requirement, and DOE, therefore, considered this insulation thickness as the baseline. As discussed in section IV.A.3 of this document, increased polyurethane foam insulation thickness was the only technology option that was not screened-out for this analysis, and thus, DOE considered more-stringent efficiency levels (*i.e.*, increased R-value) based on varying levels of increased polyurethane foam thickness.

In response to the August 2019 RFI, AHRI commented that there is a diminishing return from increasing insulation thickness due to the increasing heat transfer rate and surface area as the insulation thickness increases. (AHRI, No. 6 at pp. 1–2) This comment was supported by individual manufacturers during interviews with DOE. Manufacturers stated that surface tension decreases as the foam thickness increases, which results in the foam becoming less stable. To counter this, less blowing agent is used and the foam becomes denser, thereby reducing the added insulating benefit per inch of applied insulation at thicknesses above 3 inches (if foam is applied by being poured into a form, which is the typical application method for polyurethane foam on jacketed UFHWSTs). Manufacturers stated that due to the changing foam density as the insulation thickness increases, the R-value per inch is expected to diminish as insulation thickness is increased, especially as thickness increases beyond 3 inches. As a result, when more than 3 inches of insulation thickness is applied, it is unclear how much additional R-value could be achieved by continuing to increase the thickness of the foam of jacketed UFHWSTs. Unjacketed tanks, which are intended for outdoor installation and may not have the same space constraints as indoor units, do not have an outer metal jacket enclosing and protecting the foam. As a result, unjacketed tanks can be spray-foamed in layers, which reduces the compression of the foam and mitigates the potential for changes

in foam density at thicknesses above 3 inches. However, all UFHWSTs were considered in a single equipment class (as discussed in section IV.A.1 of this document), so the max-tech level for jacketed UFHWSTs was applied for all UFHWSTs in this analysis. Furthermore, feedback from manufacturers and DOE’s previous knowledge of the UFHWST market indicated that at least 90 percent of UFHWSTs are jacketed and intended for indoor installation.

Therefore, DOE expects uncertainty related to the effective R-value of insulation for insulation thicknesses above 3 inches. Because thicknesses above 3 inches are not typically used on jacketed UFHWSTs, the improvement in R-value as insulation thickness increases beyond 3 inches for jacketed tanks is unclear at this time. Therefore, due to the high level of uncertainty regarding the R-value of foam insulation with thickness greater than 3 inches, DOE has limited its analysis to considering only up to 1 additional inch of insulation thickness above the baseline insulation level of 2 inches, so 3 inches of foam insulation was considered the max-tech efficiency level for UFHWSTs in this analysis.

DOE requests data and information related to achievable R-values of polyurethane foam insulation on jacketed UFHWSTs at thicknesses above 3 inches. DOE also seeks comment on its understanding of the difficulties associated with applying more than 3 inches of foam to jacketed UFHWSTs.

DOE also included one intermediate level of added insulation in its analysis, with 0.5 inch of added insulation above the 2-inch baseline that results in R-12.5. DOE has assumed for its analysis that polyurethane foam has an R-value per inch of 6.25 (up to a maximum thickness of 3 inches). The selected ELs used in the analyses for this NOPD are shown in Table IV.1.

TABLE IV.1—EFFICIENCY LEVELS FOR REPRESENTATIVE UFHWSTs BASED ON INCREASED INSULATION

Efficiency levels	Insulation thickness (polyurethane foam)	R-value of insulation
Baseline—EL0	2 inches .....	R-12.5.
EL1 .....	2.5 inches .....	R-15.625.
EL2 .....	3 inches .....	R-18.75.

DOE seeks comment on the considered efficiency levels analyzed for UFHWSTs. Additionally, DOE seeks comment on its assumption that polyurethane foam has an R-value per

inch of 6.25, up to a maximum thickness of 3 inches.

2. Representative Equipment for Analysis

For the engineering analysis, DOE analyzed the publicly-available details, including storage volumes and other critical features, of UFHWST models available on the market and conducted interviews with manufacturers under NDAs to determine appropriate representative equipment to analyze. In response to the August 2019 RFI, several commenters highlighted the customized and variable nature of the UFHWST market. (BWC, No. 5 at pp. 1–2; AHRI, No. 6 at p. 2; A.O. Smith, No. 8 at p. 1) BWC stated that it does not believe it is possible to have one representative volume of UFHWSTs (or more in a reasonable quantity). BWC also commented that it would be difficult to have a representative application with associated R-value, ambient conditions, tank setpoint, and draw patterns for UFHWSTs and suggested that DOE’s analysis should not be overly simplified if it is acknowledged that tank orientation can affect heat losses. (BWC, No. 5 at pp. 2–3) A.O. Smith recommended that DOE conduct its analysis using various standard models, but the agency should keep in mind the customized nature of the UFHWST market. (A.O. Smith, No. 8 at p. 1)

To account for the wide range of UFHWSTs on the market, DOE chose several representative baseline units for analysis. As discussed in section IV.C.1.c of this document, DOE also included several ambient temperature conditions in its energy use analysis to reflect typical installation locations (*i.e.*, indoors in mechanical rooms or outdoors in “Very Hot” and “Hot” regions). Although UFHWSTs can be installed horizontally or vertically, DOE used a conservative assumption in its energy use analysis that water temperature would remain uniformly at 140 °F (as discussed in section IV.C.1.b of this document, DOE did not consider stratification of water temperatures inside the tank and assumed that a tank would always be full of hot water). Therefore, DOE determined that installation orientation would not have a significant impact on its energy use analysis results, so the Department calculated estimated standby losses based on all tanks being vertical, because vertical installations are the most common. The characteristics of these representative units are listed in Table IV.2.

TABLE IV.2—REPRESENTATIVE TANK CHARACTERISTICS

Volume range (gal.)	Representative volume (gal.)	Representative dimensions	
		Height (in.)	Diameter (in.)
0 to 100 .....	50	47	22
101 to 250 .....	175	65	28
251 to 500 .....	375	72	42
501 to 1000 .....	750	141	42
1001 to 2000 .....	1500	124	60
2001 to 5000 .....	3500	168	84
>5000 .....	5000	180	96

In response to the August 2019 RFI, BWC stated that most manufacturers use polyurethane foam to insulate UFHWSTs, although fiberglass may be used in certain areas or on certain tanks where it is difficult to apply foam. (BWC, No. 5 at p. 2) As discussed in section IV.C.1 of this document, in its energy use analysis, DOE divided the surface area of each tank, at each EL, into several zones and assigned a representative R-value to each zone depending on the expected insulation type and thickness. Although most tank surfaces can be insulated with 2 inches of polyurethane foam, it is not practical to insulate all surfaces with polyurethane foam due to the insulation application process or the need to retain

access to certain ports. In particular, it can be difficult to insulate the areas surrounding fittings, manholes or handholes, and the tops or bottoms of tanks with polyurethane foam, so DOE accounted for the use of other insulating materials in those areas. Similarly, certain fittings and ports will remain uninsulated due to the need to be accessible, situations for which DOE also accounted in its analysis.

In publicly-available equipment literature, DOE observed that the typical number of ports on UFHWSTs ranged from 5 to 11. These ports can include an inlet port, an outlet port, a temperature sensor, a temperature and pressure relief valve, a drain, a recirculation valve, one or more ports for anode rods, and other custom fittings. In its energy use

analysis, DOE selected 7 ports as a representative number of ports. DOE further assumed that a 2-inch-wide ring of fiberglass would be placed around each port. DOE also included a small area (1.5 inches in diameter) of uninsulated tank at each port to reflect losses through adjoining pipes or fittings. Wherever fiberglass was modeled as the insulation for tanks, the thickness of fiberglass was the same as the thickness of polyurethane foam on the same tank (which for the analysis in this NOPD, depends on the EL) because the thickness of insulation would be uniformly constrained by the outer metal jacketing on most UFHWSTs. The R-values for each insulation type and at each EL are shown in Table IV.3.

TABLE IV.3—INSULATION R-VALUES

Material	R-value per inch	Effective R-value		
		EL0	EL1	EL2
Polyurethane Foam .....	6.25	12.5	15.625	18.75
Fiberglass .....	3.5	7	8.75	10.5
Bare Tank (free convective heat transfer to air) .....	N/A	0.33	0.33	0.33

Based on feedback from manufacturers and its own review of publicly-available materials, DOE also assumed that the tank tops would be covered with fiberglass instead of polyurethane foam, and that an extra maintenance access port (a 6 inch by 4 inch hand hole for tanks with storage volumes up to 500 gallons, or a 12 inch by 16 inch manhole for tanks with storage volumes greater than 500 gallons) would be partially covered with fiberglass and partially bare.

DOE requests comment on the inputs and assumptions used in its engineering analysis. In particular, DOE requests input on its choice of representative volumes, its assumptions about the typical coverage of various insulation materials, and its estimated R-values for

each insulation material at each EL considered.

### 3. Cost Analysis

The cost analysis portion of the Engineering Analysis is typically conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated equipment, and the availability and timeliness of purchasing the equipment on the market. The cost approaches are summarized as follows:

- *Physical teardowns*: Under this approach, DOE physically dismantles commercially-available equipment, component-by-component, to develop a detailed bill of materials for the equipment.

- *Catalog teardowns*: In lieu of physically deconstructing equipment, DOE identifies each component using parts diagrams (available from sources such as manufacturer websites or appliance repair websites) to develop the bill of materials for the equipment.

- *Price surveys*: If a physical or catalog teardown is infeasible (e.g., for tightly integrated equipment such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable), cost-prohibitive, or otherwise impractical (e.g. large commercial boilers), DOE conducts price surveys using publicly-available pricing data published on major online retailer websites and/or by soliciting prices through distributors or other commercial channels.

As discussed in section IV.D of this document, DOE did not conduct a cost

analysis because DOE did not have the requisite inputs to develop its LCC model with a degree of certainty that would meet the statute's "clear and convincing" evidentiary threshold. DOE likewise did not expend resources to generate the cost-efficiency curve, as it is unnecessary without an LCC model to feed into.

### C. Energy Use Analysis

As discussed, UFHWSTs store hot water and do not directly consume fuel or electricity for the purpose of heating water, so any potential amendments to the standard would reduce standby loss of heat from the stored water. Further, DOE currently only prescribes a minimum insulation requirement (as opposed to a minimum efficiency requirement) for UFHWSTs. Accordingly, the energy use analysis determines the annual energy consumption of paired water heaters and boilers due to standby loss of the UFHWSTs and assesses the energy savings potential of increasing the stringency of the required insulation for UFHWSTs.

#### 1. Tank Thermal Loss Model

For this determination, DOE adapted the thermal loss model described in the technical support document (TSD) for the commercial water heating energy conservation standards (ECS) NOPR published in the **Federal Register** on May 31, 2016 (81 FR 34440; May 2016 CWH ECS NOPR), with some modifications to how the tank surface areas are defined.<sup>7</sup> These modifications were introduced to capture equipment performance that results from differences in surface insulation thickness over different areas of tank (*i.e.*, insulation around fittings and access ports). These differences are described in section IV.C.1.a of this document.

$$Q_{hr,j} = \sum_{i=1}^6 \frac{A_{i,j} \times (T_i - T_{amb,z})}{R_{i,j}}$$

Where:

$Q_{hr,j}$  = The hourly heat loss for the UFHWST for each efficiency level (EL)  $j$  (Btu/hr).

$i$  = The surface area of the cylindrical tank is divided into different zones each indexed  $i$ .

$A_{i,j}$  = The area of each zone  $i$  at each EL  $j$  (ft<sup>2</sup>).

$T_i$  = The constant internal water temperature for each tank zone  $i$  (°F).

$T_{amb,z}$  = The ambient air temperature for each climate zone  $z$  (°F).

$R_{i,j}$  = The net R-value of the insulation for each zone  $i$  at each EL  $j$  (°F-ft<sup>2</sup>-hr/Btu).

#### a. Tank Surface Area ( $A_{i,j}$ )

As discussed in section IV.B.2 of this document, DOE used a conservative assumption in its energy use analysis that water temperature would remain uniformly at 140 °F and did not consider stratification of water temperatures inside the tank. Therefore, although tanks can be installed horizontally or vertically, there is no difference in thermal losses between these configurations, and DOE only used vertical tanks in its analysis. The UFHWST's total external surface area was divided into separate zones, where  $i$  is the index for each zone. Zones represent the different areas of an UFHWST that would have unique insulative values. These zones are described in more detail in section IV.B of this document.

$A_{TankTop}$  = When the UFHWST is oriented vertically, this represents the tank's top surface.

$A_{Fittings}$  = Is the sum of all uninsulated areas of the tank's surface devoted to fittings.

$A_{FittingInsulation}$  = Is the sum of all insulated areas of the tank's surfacesurrounding the (uninsulated) fittings.

$A_{AccessPort}$  = Is the sum of all insulated areas of the tank's surface devoted to the tank's cleanout hand hole port or manhole.

$A_{TankWall}$  = When the UFHWST is oriented vertically, this represents the tank's walls.

$A_{TankBottom}$  = When the UFHWST is oriented vertically, this represents the tank's bottom surface.

#### b. Tank Internal Water Temperature ( $T_i$ )

For this analysis, DOE assumed that the water inside the UFHWSTs is at a constant uniform temperature of 140 °F, which is the average water temperature required by the current Federal test procedures for storage-type CWH equipment during standby loss testing. *See generally* 10 CFR 431.106; 10 CFR part 431, subpart G, appendix A, section 6; 10 CFR part 431, subpart G, Appendix B, section 5. Because UFHWSTs serve the same function as storage-type CWH equipment in standby mode, DOE expects that similar conditions would be appropriate for UFHWSTs as for storage-type CWH equipment in standby mode. DOE used a conservative assumption that internal water temperatures would remain indefinitely at 140 °F. In reality, the rate of heat loss from a UFHWST would decrease slowly as the temperature difference between the internal stored water and the ambient air decreased. However, because this effect would be minimal,

DOE did not consider stratification of water temperatures inside the tank and assumed that a tank would always be full of hot water. Therefore, DOE held the temperature  $T$  constant across all tank zones  $i$ .

DOE requests comment on the appropriateness of its assumption regarding the use of a constant internal water temperature of 140 °F.

#### c. Tank Ambient Temperature ( $T_{amb,z}$ )

Based on feedback from manufacturers during interviews conducted under NDA, DOE assumed that 90 percent of UFHWSTs would be installed indoors and that the remaining 10 percent would be installed outdoors. DOE assumed that all tanks that are installed indoors would have a constant ambient temperature of 75 °F, which is the average air temperature required by the current Federal test procedure for storage-type CWH equipment during standby loss testing. *See generally* 10 CFR 431.106; 10 CFR part 431, subpart G, appendix A, section 6; 10 CFR part 431, subpart G, Appendix B, section 5.

For the fraction of UFHWSTs that are installed in outdoor, or non-conditioned, spaces, DOE defined each climate zone ( $z$ ) and calculated the monthly average temperatures from Typical Meteorological Year 3 (TMY3)<sup>8</sup> data for the Building America climate regions 1A, 2A, and 2B.<sup>9 10</sup> The temperatures for each region are represented by the cities in Table IV.4. The monthly regional averages were then weighted using the regional city populations based on data from 2018 Census.<sup>11</sup>

<sup>8</sup> The TMY data sets hold hourly values of solar radiation and meteorological elements for a 1-year period. Their intended use is for computer simulations of solar energy conversion systems and building systems to facilitate performance comparisons of different system types, configurations, and locations in the United States and its territories. Because they represent typical rather than extreme conditions, they are not suited for designing systems to meet the worst-case conditions occurring at a location.

<sup>9</sup> Wilcox, S. and W. Marion, 2008 User's Manual for TMY3 Data Sets, NREL/TP-581-43156 (April 2008) (Available at: <https://www.nrel.gov/docs/fy08osti/43156.pdf>).

<sup>10</sup> Building America Best Practices Series, Volume 7.3, Guide to determining climate regions by county 2015 (Available at: [https://www.energy.gov/sites/prod/files/2015/10/f27/ba\\_climate\\_region\\_guide\\_7.3.pdf](https://www.energy.gov/sites/prod/files/2015/10/f27/ba_climate_region_guide_7.3.pdf)).

<sup>11</sup> U.S. Census Population Estimates by County, as of 2018 (Available at: [https://www.census.gov/data/tables/time-series/demo/popest/2010s-counties-total.html#par\\_textimage](https://www.census.gov/data/tables/time-series/demo/popest/2010s-counties-total.html#par_textimage)).

<sup>7</sup> Available at: <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0042-0016>, section 5.5.3 (Last accessed: April 8, 2020).

TABLE IV.4—CLIMATE ZONES AND REPRESENTATIVE CITIES

Climate zone	Population	Representative city	TMY location No.
1A	6,208,359	Miami	722020
2A	38,418,718	Houston	722430
2B	6,869,283	Phoenix	722780
3A	43,230,951	Atlanta	722190
3B—CA	29,951,605	Los Angeles	722950
3B—Non CA	5,546,151	Las Vegas	723677
3C	8,596,694	San Francisco	724940
4A	69,154,015	Baltimore	724060
4B	2,245,023	Albuquerque	723650
4C	9,696,610	Seattle	727930
5A	70,727,419	Chicago	725300
5B	13,119,013	Boulder	724699
6A	17,705,715	Minneapolis	726580
6B	2,650,907	Helena	727720
7	2,625,239	Duluth	727450
8	170,286	Fairbanks	702610

While a UFHWST can be installed outdoors anywhere in the Nation, for this analysis, DOE is using the assumption that these installations will only occur in the “Very Hot” and “Hot”

regions (Building America climate zones 1A, 2A, and 2B) where the chance of overnight freezing is very low.

Table IV.5 shows the fraction of UFHWSTs installed indoors versus

outdoors, and the monthly average ambient temperature values for each  $T_{amb, z}$ .

TABLE IV.5—AVERAGE MONTHLY AMBIENT TEMPERATURES

Climate zone/location (z)	Location weight	Average temperature for month (°F)											
		1	2	3	4	5	6	7	8	9	10	11	12
1A	0.012	67	70	71	75	80	82	83	82	81	79	74	69
2B	0.075	55	60	63	75	81	93	96	93	87	77	64	53
2A	0.013	51	55	61	69	75	81	83	83	80	69	63	55
Indoor	0.900	75	75	75	75	75	75	75	75	75	75	75	75

DOE requests comment on its assumption regarding the typical ambient temperatures for UFHWSTs installed indoors and outdoors.

DOE requests comment on its assumption that 10 percent of all UFHWST would be installed outdoors. DOE requests information on the typical capacities and R-values of outdoor equipment.

DOE requests comment on its assumption that outdoor installations

would be limited to climate zones 1A, 2A, and 2B. DOE requests information or data on the fraction of installations that occur within these, or other, climate zones.

d. R-value of Insulation ( $R_{i, j}$ )

The R-value of each zone  $i$  of the UFHWST is defined for each EL  $j$  in the engineering analysis in Table IV.1 and Table IV.3 of section IV.B of this document.

DOE requests comment on its Tank Thermal Loss Model.

2. Annual Energy Use Due to UFHWST Losses

To calculate the energy used by the boiler attributable to the heat losses of the UFHWSTs, DOE used the following equation for each EL listed in Table IV.1 of this document:

$$E_{Boil, j} = Q_{hr, j} \times 8760 \times \frac{1}{Boiler_{\eta, yr}}$$

Where:

$E_{Boil, j}$  = The energy by the boiler required to maintain the water temperature in the UFHWST at the temperature  $T_i$  at each EL  $j$ , (Btu/yr),

$Q_{hr, j}$  = hourly heat loss for the UFHWST at each EL  $j$  (see section IV.C.1, (Btu/hr) of this document), and

$Boiler_{\eta, yr}$  = average boiler efficiency (%) in year  $yr$  (defined in section IV.F.2 of this document).

Table IV.6 presents the energy used by the boiler attributable to the heat losses of the UFHWST at the baseline (EL 0) and each EL by tank capacity.

Table IV.7 presents the resulting energy savings at each EL above baseline. The representative storage volumes used in this analysis are discussed in section IV.B.2 of this document.

TABLE IV.6—BOILER ENERGY USE DUE TO UFHWST HEAT LOSSES IN 2025 (MMBTU/YR) <sup>12</sup>

EL	Capacity (US gal)						
	50	175	375	750	1500	3500	5000
0 .....	1.76	2.78	4.71	8.59	11.44	21.09	25.27
1 .....	1.55	2.39	3.97	7.32	9.63	17.45	20.80
2 .....	1.41	2.13	3.48	6.48	8.42	15.02	17.83

TABLE IV.7—SAVINGS IN BOILER ENERGY USE DUE TO REDUCED UFHWST HEAT LOSSES IN 2025 (MMBTU/YR)

EL	Capacity (US gal)						
	50	175	375	750	1500	3500	5000
1 .....	0.21	0.39	0.74	1.26	1.81	3.64	4.47
2 .....	0.35	0.64	1.23	2.10	3.02	6.07	7.44

3. Additional Sources of Uncertainty

As discussed in section IV.B.2 of this document, the inputs to DOE’s tank thermal loss model were primarily based on publicly-available information, DOE’s previous knowledge of UFHWSTs, and feedback from manufacturers received during interviews conducted under NDAs. To validate the model, DOE compared the results produced by the model to results of testing previously conducted to evaluate the performance-based test procedure proposed for UFHWSTs in the May 2016 CWH TP NOPR, which was largely based on the standby loss test procedure for commercial storage water heaters. The proposed test procedure included a standby loss test that would be conducted as the mean tank water temperatures decay from 142 °F to 138 °F at a nominal ambient temperature of 75 °F. 81 FR 28588, 28603 (May 9, 2016). Standby loss tests were conducted on 17 UFHWSTs with an advertised insulation level of R–12.5 and storage volumes of 40, 80, or 120 gallons in order to gather data on whether measured standby losses were consistent with what would be expected from tanks insulated to their rated and/or advertised insulation levels, to assess the repeatability and sensitivity of the proposed test procedure, and to gather data on the potential burden in conducting the testing.

DOE used the same analytical model described in this section to calculate the expected losses from each of these tanks, using their measured dimensions and actual number of ports. As discussed, the internal water temperature (140 °F) and ambient air temperature (75 °F) used for the analytical model were the same as the

average temperatures seen during the physical testing. The same assumptions about insulation details (e.g., R-values for different materials and the use of fiberglass around ports) were used as were used for the baseline (R–12.5) units in DOE’s thermal loss model. The average predicted rate of standby losses for these tanks were 73 percent of the measured standby losses and ranged from as low as 58 percent of the measured losses up to 90 percent of the measured losses. Because the estimated standby losses are significantly lower than the measured losses, this suggests that DOE’s thermal loss model undercounts the actual standby losses that would occur in the field. Furthermore, the wide range in calculated standby losses as compared to measured standby losses indicates that the accuracy of the thermal loss calculations in predicting the standby losses of a particular model will be somewhat unpredictable, thereby adding additional uncertainty.

Furthermore, when DOE conducted standby loss tests of UFHWSTs, it found that tanks with identical storage volumes, dimensions, number of ports, and nominal insulation levels differed by up to 8.5 percent, whereas DOE’s model would predict the same level of standby losses for these tanks. This finding suggests that there may be variations in the extent of R–12.5 coverage between units, even between units from the same manufacturer. As discussed in section IV.B.2 of this document, it may not be practical to insulate all surfaces of UFHWSTs with polyurethane foam due to the nature of the insulation application process or the need to retain access to certain ports. Differences in manufacturers’ tank designs, manufacturing processes, or their interpretations of the R–12.5 insulation requirement could lead to variations in the amount of tank surface

area that is actually insulated with R–12.5. Therefore, tanks that appear to have the same attributes and insulation may have different levels of standby losses in the field. This source of potential variation in standby losses further supports DOE’s conclusion that there may be additional sources of thermal losses that vary between tanks and that are not adequately captured in its current thermal loss model. This variation also makes it very difficult for DOE to characterize the representative performance of a “baseline” UFHWST, or the expected performance at any potential amended standard level, with a high degree of confidence since there is significant variation in thermal energy losses at a given efficiency level (R-value) that cannot be readily predicted or otherwise accounted for in the analysis. Due to these potential variations in insulation coverage and because DOE has not been able to verify its thermal loss model against its physical test results, there is significant uncertainty as to the validity of its energy use analysis.

D. Life-Cycle Cost and Payback Period Analysis

To determine whether a standard is economically justified, EPCA requires DOE to consider the economic impact of the standard on manufacturers and consumers, as well as the savings in operating costs throughout the estimated average life of the equipment compared to any increase in price, initial charges, or maintenance expenses of the equipment likely to result from the standard. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(II)) The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. To evaluate the economic impacts of potential energy conservation

<sup>12</sup> The projected value for Boiler Efficiency (*Boiler<sub>e</sub>*) is 0.922 in 2027, see section IV.F.2 of this document for more details.

standards on individual consumers, in order to determine whether amended standards would be economically justified, DOE typically uses the following two metrics:

- The LCC is the total consumer expense of equipment over the life of that equipment, consisting of total installed cost (manufacturer selling price, distribution chain mark-ups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the equipment.

- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of more-efficient equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE typically measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of equipment in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline equipment.

1. Installation Costs

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the equipment. In response to the August 2019 RFI, DOE received several comments related to installation issues associated with UFHWSTs with increased insulation thickness. BWC and AHRI stated that increasing the size of UFHWSTs by increasing the thickness of required insulation will lead to difficulties getting tanks through doorways and to their final locations in existing mechanical rooms. (BWC, No. 5 at p. 2 and AHRI, No. 6 at p. 2)

AHRI commented that reducing the storage volume of the tank itself is not a practical option because the most critical design feature of UFHWSTs is their storage volume. (AHRI, No. 6 at pp. 1–2) AHRI asserted that the predominant market for UFHWSTs are replacement installations, and again increased insulation would lead to difficulties with replacement because of space constraints in existing mechanical rooms. Additionally, BWC suggested that this could potentially necessitate the following changes: replacement of one UFHWST with two UFHWSTs, addition of mechanical rooms, or changes to system configurations. (BWC, No. 5 at p. 2)

Feedback from manufacturer interviews conducted under NDAs also suggests that manufacturers are very concerned that increases in overall UFHWST dimensions due to increased insulation thickness could require modifications to existing doorways or mechanical rooms, in order to be able to replace existing tanks with a single tank of similar volume, which would significantly increase installation costs.

In response to these comments from BWC and AHRI, DOE examined some of the potential installation costs (*i.e.*, widening doorways that lead to the mechanical room and expanding the mechanical room itself). To estimate the costs of expanding doorways in order to allow UFHWSTs to pass through, DOE was able to examine the cost of door removal and reinstallation using data for exterior and interior door installations available in the RSMean 2020 Estimating Handbook Online.<sup>13</sup> DOE examined the cost breakdown of installing new fire-rated doorways, both at 3 to 4-foot, and 6 to 7-foot width ranges, as well as interior passage doors at these same widths. For these doorway types, DOE did not use the entire installation values cited in the literature; rather, DOE only used the portions of the cost associated with the installation of existing frames and doors. DOE expects that comparable costs would be required to remove

existing doors in a manner where they could be reinstalled without the need for new equipment, so for this estimate, the doorway installation cost were doubled to reflect both removal and reinstallation. Under this scenario, DOE found that door removal and reinstallation costs could potentially increase the cost of UFHWST installation by between \$280 and \$1720 for every doorway requiring modification. DOE currently has no method of determining the average number of doorways that a UFHWST would need to pass through during the course of installation which increases the potential range of installation costs.

For this NOPD, DOE was unable to find detailed data characterizing the costs of restructuring the mechanical room. However, DOE was able to examine other water- heating rulemakings with equipment with water storage characteristics where replacement installations could prove difficult. Specifically, DOE compared the magnitude of difference between the average, the 95th percentile, and maximum installation costs for the following *baseline* equipment as a proxy for potential customer impacts in extreme cases. DOE also does not currently have enough data indicating the percentage of UFHWST installations that could necessitate building modifications to get the UFHWST to its destination in the mechanical room, if tank dimensions were increased. However, the results in Table IV.8, while illustrative, are not exhaustive, and they show that the potential range of increased costs is significant, particularly for commercial equipment where the range of potential installation costs can be greater than 50 percent than the average in some extreme cases. It is expected that these costs would often be unavoidable because building owners are likely unable to substitute these tanks with tanks of alternative dimensions or volumes to meet operational needs and fit in existing spaces.

TABLE IV.8—MAGNITUDE OF POTENTIAL INCREASE IN INSTALLATION COSTS

Equipment	Installation cost (\$)			Increase over mean (%)	
	Mean	95th-Percentile	Maximum	95th-Percentile	Maximum
Commercial-Duty Gas Storage Water Heater <sup>14</sup> .....	812	1,225	2,432	51	199
Residential-Duty Commercial Gas Storage Water Heater <sup>15</sup> .....	678	1,001	2,088	48	208
Commercial Electric Storage Water Heater <sup>16</sup> .....	1,054	1,325	1,773	26	68

<sup>13</sup> RSMean Data from Gordian (2020) (Available at: <https://www.rsmeanonline.com/>) (Last Accessed: July 20, 2020). For details, please see the

following records: B20301251800: Door, single, exterior fire door, “A” label, B20301252500: Door, double, exterior fire door, “A” label,

C10201101600: Door, interior fire door, B20301251900: Door, double, aluminum, entrance, B20301251200: Door, single, aluminum, entrance.

TABLE IV.8—MAGNITUDE OF POTENTIAL INCREASE IN INSTALLATION COSTS—Continued

Equipment	Installation cost (\$)			Increase over mean (%)	
	Mean	95th-Percentile	Maximum	95th-Percentile	Maximum
Consumer Gas-fired Storage Water <sup>17</sup> .....	630	1,375	2,370	118	276
Consumer Electric Storage Water Heaters <sup>18</sup> .....	288	402	498	40	73
Consumer Oil-fired Storage Water Heaters <sup>19</sup> .....	1,974	2,283	2,910	16	47

DOE recognizes that increasing installation costs can reduce, or even eliminate, the future economic consumer benefits from a potential new standard. Because of this, DOE tentatively agrees with the commenters that installation costs for certain UFHWST customers could include the removal and reinstallation of exterior and interior doorways, and in some extreme cases, it could require the restructuring of existing mechanical rooms to fit the new replacement equipment if the dimensions of UFHWSTs are increased. Furthermore, DOE tentatively agrees with the commenters that a small increase in tank dimensions in a potential new standards case could potentially disproportionately increase the installation costs for a fraction of consumers of replacement equipment. While the fraction of impacted consumers is uncertain, DOE is certain that there will be some consumers who will experience these higher installation costs. These higher installation costs for

replacement equipment create uncertainty regarding the positive economic benefits for a potentially significant fraction of consumers from an amended standard for UFHWSTs.

DOE requests data and information which can be used to estimate installation costs of UFHWSTs with modified dimensions.

DOE requests information and data characterizing the types of buildings where installation difficulties are likely to occur and to lead to increased installation cost, as well as the frequency with which such installation problems may arise.

DOE requests information and data characterizing the average installation costs for UFHWSTs at all different storage volumes.

DOE requests information and data characterizing the circumstances that would drive the decision to potentially restructure an existing building spaces, including doorways and mechanical rooms, when installing a replacement UFHWST. For example, is the decision driven by a minimum building code requirement for door openings?

2. Annual Energy Consumption

DOE typically determines the annual energy consumption for equipment at different efficiency levels. DOE's approach to determining the annual energy consumption of UFHWSTs is described in section IV.C of this document. In response to the August 2019 RFI, A.O. Smith suggested that any potential energy savings resulting from changes to insulation thickness would be small and significantly outweighed by the costs that would be borne by commercial customers and manufacturers. (A.O. Smith, No. 8 at p. 2)

As discussed in section V.A.1 of this document, DOE estimates that amended standards at the max-tech level would result in site energy savings (*i.e.*, realized at the source of hot water by either a water heater or hot water supply boiler) of 0.017 quads over 30 years. However, as discussed in section IV.C.1 of this document, even small adjustments to several critical inputs to the model could have a large impact on

these results and could significantly alter the findings. For example, as explained previously, the inputs to the tank thermal loss model are primarily based on publicly-available data and information gathered during manufacturer interviews, but as discussed earlier, the results from this model underestimate losses as compared to those observed during testing of UFHWSTs that was previously done to evaluate the test procedure proposed for UFHWSTs in the May 2016 CWH TP NOPR. These uncertainties would propagate through the cost-benefit analyses and could potentially significantly reduce the energy savings from amended standards. Therefore, DOE did not conduct an LCC and PBP analysis for this NOPD.

E. Shipments Analysis

DOE uses projections of annual equipment shipments to calculate the national impacts of potential amended or new energy conservation standards. The shipments model takes an accounting approach in tracking market shares of each equipment class and the vintage of units in the stock. Stock accounting uses equipment shipments as inputs to estimate the age distribution of in-service equipment stocks for all years.

In response to the August 2019 RFI, AHRI stated that it would provide DOE with 2018 shipments data for UFHWST. (AHRI, No. 6 at p.1) However, no data were received, so DOE developed its own shipments estimates based on available data.

To project shipments and equipment stocks for 2025 through the end of the 30-year analysis period (2054), DOE used a stock accounting model. Future shipments are calculated based on projections in *Annual Energy Outlook 2021 (AEO 2021)* (see section IV.E.3 of this document for further details). The stock accounting model keeps track of shipments and calculates replacement shipments based on the expected service lifetime of UFHWSTs and a Weibull distribution that identifies a percentage of units still in existence from a prior year that will fail and need to be replaced in the current year.

<sup>14</sup> U.S. Department of Energy, Energy Efficiency and Renewable Energy Office, Energy Conservation Standards for Commercial Water Heating Equipment, NOPR Analytical Spreadsheet: Commercial Water Heater (CWH) Life Cycle Cost (LCC) and Payback Period Analysis (April 20, 2016) (Available at: <https://regulations.gov/document/EERE-2014-BT-STD-0042-0013>). See worksheet labelled: Forecast Cells.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> U.S. Department of Energy, Energy Efficiency and Renewable Energy Office, Energy Efficiency Standards for Pool Heaters, Direct Heating Equipment and Water Heaters, 2010–04–06 Final Rule Analytical Tools (July 1, 2011) (Available at: <https://www.regulations.gov/document?D=EERE-2006-STD-0129-0148>). See: 2010–03–26 Life Cycle Cost Electric Storage Water Heaters.xlsx.

<sup>18</sup> U.S. Department of Energy, Energy Efficiency and Renewable Energy Office, Energy Efficiency Standards for Pool Heaters, Direct Heating Equipment and Water Heaters, 2010–04–06 Final Rule Analytical Tools (July 1, 2011) (Available at: <https://www.regulations.gov/document?D=EERE-2006-STD-0129-0148>). See: 2010–03–26 Life Cycle Cost Gas-fired Storage Water Heaters.xlsx.

<sup>19</sup> U.S. Department of Energy, Energy Efficiency and Renewable Energy Office, Energy Efficiency Standards for Pool Heaters, Direct Heating Equipment and Water Heaters, 2010–04–06 Final Rule Analytical Tools (July 1, 2011) (Available at: <https://www.regulations.gov/document?D=EERE-2006-STD-0129-0148>). See: 2010–03–24 Life Cycle Cost Oil-fired Storage Water Heaters.xlsx.



AHRI and A.O. Smith both stated that the UFHWST market is very small and often customized, and that the predominant market for UFHWSTs is for replacement equipment. (AHRI, No. 6 at p. 2; A.O. Smith, No. 8 at pp.1) While this may be the case, DOE expects that manufacturers of this equipment will continue to seek out new markets and that some equipment will be sold into new construction. Therefore, the Department developed projections for this market as described in section IV.E.3 of this document.

DOE's approach begins with an estimate of the current stock of UFHWSTs. DOE uses an estimate of average UFHWST lifetime to derive the fraction of the stock that is replaced in each year. DOE then adds an estimate of new UFHWSTs installed in each year.

#### 1. Stock Estimates

DOE investigated each sector that is presumed to operate UFHWSTs: Residential, commercial, and industrial. However, DOE was unable to find clear indicators of how many UFHWST are used by any of these sectors, so it developed sectoral stock estimates from publicly-available data, as discussed in the paragraphs that follow.

##### a. Residential Stock

To estimate the stock of UFHWSTs in the residential sector, DOE examined the Residential Energy Consumption Survey (RECS)<sup>20</sup> database. Although RECS does not contain specific fields that indicate the presence of a UFHWST, nor does RECS catalog specific water heating technologies, DOE was able to examine the available sample for buildings that would be likely to contain a UFHWST. DOE assumed that such a building would be characterized as follows:

- A building with multiple residences (TYPEHUQ = 4 and 5),
- where the hot water heater and storage tank are not in the apartment itself (H2OHEATAPT = 2), and
- where the hot water heater is of a type that is tankless, or on-demand. (WHEATSZ = 4)

The results of a search of the RECS database using these assumptions yielded a sample of zero buildings. Based upon these results, DOE tentatively agrees with AHRI's statement that UFHWST are primarily installed in industrial/commercial applications (AHRI, No. 6 at p. 2). Accordingly, DOE

<sup>20</sup> Presently the 2015 edition of RECS is the most recent version. Energy Information Administration (EIA), 2015 Residential Energy Consumption Survey (RECS) (Available at: <https://www.eia.gov/consumption/residential/>) (Last accessed April 4, 2019).

has tentatively concluded that the quantity of UFHWST installed in the residential sector is minimal and should not be considered for the purpose of this determination.

##### b. Commercial Stock

To estimate the stock of UFHWSTs in the commercial sector, DOE examined the Commercial Building Energy Consumption Survey (CBECS).<sup>21</sup> Although CBECS does not contain specific fields that indicate the presence of a UFHWST, DOE was able to examine the available sample for buildings that would be likely to contain a UFHWST. DOE assumed that such a building would be characterized as follows:

- A building with water heating equipment (WTHTEQ = 1), and
- Where the main heating equipment is boilers inside (or adjacent to) the building that produce steam or hot water (MAINHT = 3).

The results of a search of the CBECS database using these assumptions yielded a commercial sample of 325,089 buildings in 2012. DOE could not find any data specifying the quantity of UFHWSTs per commercial building, so for this analysis, DOE assumed one UFHWST per building of all sizes. From this sample DOE also found that 99.2 percent of these buildings use natural gas as their primary energy source for water heating, with the remaining 0.8 percent of buildings using district water heating,<sup>22</sup> electricity, heating oil, or other fuels. For purpose of this analysis, DOE considered 100 percent of commercial buildings to use natural gas to heat water.

##### c. Industrial Stock

DOE examined the industrial data source listed in the August 2019 ECS RFI and was not able to determine an appropriate stock sample from the highly aggregated data available.<sup>23 24</sup> DOE understands that UFHWSTs are

<sup>21</sup> Presently, the 2012 edition of CBECS is the most recent version. Energy Information Administration (EIA), 2012 Commercial Building Energy Consumption Survey (CBECS) (Available at: <https://www.eia.gov/consumption/commercial/>) (Last accessed April 4, 2019).

<sup>22</sup> "District heating" is an underground infrastructure asset where thermal energy is provided to multiple buildings from a central energy plant or plants. In this context, it would be operated by local governments.

<sup>23</sup> Energy Information Administration (EIA), 2014 Manufacturing Energy Consumption Survey (MECS) (Available at: <https://www.eia.gov/consumption/manufacturing/data/2014/>) (Last accessed April 4, 2019).

<sup>24</sup> Northwest Energy Efficiency Alliance, 2014 Industrial Facilities Site Assessment: Report & Analytic Results, 2014 (Available at: <https://neea.org/img/documents/2014-industrial-facilities-stock-assessment-final-report.pdf>) (Last accessed May 3, 2021).

used to store potable hot water for human consumption and washing, not for industrial process water. Therefore, DOE assumed that the need for hot water storage would be the similar across both commercial and manufacturing sectors on a per-person basis.

To estimate the stock of industrial consumers, DOE used the number of manufacturing employees from the 2017 census.<sup>25</sup> DOE first determined the ratio of UFHWSTs per commercial employee. DOE then used the ratio of the employee count from the commercial sample described in section IV.E.1.b of this document over the total number of commercial employees to represent the number of UFHWSTs in the commercial sector on a per-employee basis. DOE then applied this ratio to the total number of manufacturing employees from the 2017 census to produce a National stock estimate for the industrial sector.

Table IV.9 presents the estimated stock of UFHWSTs in each sector, in 2012.

TABLE IV.9—ESTIMATED UFHWST STOCK (2012)

Sector	Number of units	Weight (%)
Residential .....	0	0
Commercial .....	315,360	82
Industrial .....	71,361	18

DOE requests comments generally regarding its stock analysis for UFHWSTs.

DOE requests comment regarding its assumption that there would be only one UFHWST per building.

DOE requests comment regarding its disaggregation of UFHWST stock by sector.

DOE requests comment on its assumption that UFHWSTs are not used for industrial process hot water storage.

#### 2. Shipments for Replacement

For this analysis DOE was unable to locate data on average lifetimes for UFHWSTs, and the Department likewise could not find primary data indicating average or maximum lifetimes for UFHWSTs. DOE understands that some of the causes of failure in other hot water storage tanks include corrosion, sediment build-up, and mechanical

<sup>25</sup> U.S. Census Bureau, All Sectors: Summary Statistics for the U.S., States, and Selected Geographies: 2017, Table EC1700BASIC, 2017 (Available at: <https://data.census.gov/cedsci/table?q=31-33%3A%20Manufacturing&hidePreview=false&tid=ECNBASIC2017.EC1700BASIC&vintage=2017>) (Last accessed: March 27, 2020).

failures. UFHWSTs are relatively simple equipment when compared to storage-type water heaters that include heating elements or a fossil-fuel burner with a storage tank. The simplicity of UFHWSTs would limit the likelihood of mechanical failure as compared to a storage-type water heater, but they can still fail due to corrosive or sediment build-up. Electric storage water heaters that use electric resistance elements for heating are likewise relatively simple equipment, whereas gas-fired storage water heaters can be more complex, because they typically require an ignition system, burner, combustion fans (in some cases), associated combustion controls, and flue gas venting system. The mechanical simplicity of electric storage water heaters lends itself to a failure mode related to the storage tank component of the water heating package, which would be expected to be analogous to the typical failure mode for an UFHWST. For this analysis, DOE used the average lifetime for commercial electric storage water heaters (*i.e.*, 12 years) as a proxy for UFHWST lifetime. In the TSD for

DOE’s May 2016 CWH ECS NOPR (81 FR 34440), the average lifetime for commercial electric hot water storage tanks was estimated to be 12 years. Based on this average lifetime, DOE assumed an 8 percent per year replacement rate for UFHWSTs.

DOE requests comment on its assumption of a 12-year lifetime for UFHWSTs similar to commercial electric hot water storage tanks.

3. Shipments for New Construction

To project shipments of UFHWSTs for new construction, DOE relied on the trends available from the *AEO 2021*. DOE used the Commercial Floorspace and Macro Indicators Employment Manufacturing trends to project new construction for the commercial and industrial sectors, respectively.<sup>26 27</sup> DOE estimated a saturation rate for each equipment type using building and equipment stock values. The saturation rate was applied in each year, yielding shipments to new buildings.

DOE requests comment on its use of *AEO 2021* trends as a scaler to project shipments to new construction.

4. Estimated Shipments

Table IV.10 presents the estimated UFHWST shipments in selected years.

TABLE IV.10—SHIPMENTS RESULTS FOR UFHWSTs (UNITS)

Year	Shipments
2025 .....	18,292
2030 .....	19,240
2040 .....	21,244
2050 .....	23,208
2060 .....	0

a. Distribution of Shipments by UFHWST Storage Volume

Table IV.11 presents the estimated distribution of UFHWST shipments by the storage volume ranges specified in section IV.B.2 of this document. DOE estimated these values through examination of capacity counts in existing trade literature and DOE’s CCMS database. DOE assumes that this distribution is static and does not change over time.

TABLE IV.11—DISTRIBUTION OF SHIPMENTS BY UFHWST STORAGE VOLUME (GAL)

Capacity Range	0 to 100 (percent)	101 to 250 (percent)	251 to 500 (percent)	501 to 1000 (percent)	1001 to 2000 (percent)	2001 to 5000 (percent)	>5000 (percent)
Market Share .....	3	11	23	26	20	16	1

DOE requests comment on its distribution of shipments by storage volume, and on its assumption that the distribution of shipments by storage volume does not change over time.

5. Additional Sources of Uncertainty

DOE recognizes that the market for UFHWSTs is a relatively highly customized and low-volume shipments market. DOE’s review of publicly-available information indicates that annual shipments through 2030 will be below 20,000 units (see the previous section for additional details). Additionally, in response to the August 2019 RFI, BWC submitted a list of over 200 companies which it identified as UFHWST manufacturers, which underscores the low-volume nature of the UFHWST industry. (BWC, No. 5 at p.2) DOE reviewed these companies and found many to be custom fabrication/ welding shops or producers of vessels for niche industry processes such as chemical mixing or fuel storage.

Although most of the manufacturers listed by BWC may theoretically be capable of manufacturing UFHWSTs, DOE did not find evidence that these businesses advertise or market UFHWSTs. However, DOE was able to confirm that some of the companies listed by BWC manufacture UFHWSTs, and DOE included these manufacturers in its list of UFHWST manufacturers. In total, DOE has identified 48 UFHWST manufacturers, 37 of which are small domestic manufacturers.

Due to the niche nature of this marketplace, it is difficult to accurately predict how the market would respond to amended standards (*e.g.* whether any manufacturers would face disproportionately high conversion costs, what changes may result to the distribution of tank sizes sold, if consumers would select different equipment to meet their water heating needs, or whether manufacturers might consolidate or exit the market). These uncertainties may substantially impact

the findings if DOE were to complete a full economic impact analysis of amended standards for UFHWSTs or estimate the cost-effectiveness of a more-stringent standard.

F. National Impact Analysis

DOE conducted an NIA that assesses the NES in terms of total site energy savings that would be expected to result from new or amended standards at specific efficiency levels. DOE did not assess the net present value (NPV) of the total costs and benefits experienced by consumers as part of the NIA because of the lack of an LCC analysis as previously discussed. DOE calculates the NES for the potential standard levels considered based on projections of annual equipment shipments, along with the annual energy consumption from the energy use analysis. For the present analysis, DOE projected the site energy savings over the lifetime of UFHWSTs sold from 2025 through 2054.

<sup>26</sup> U.S. Energy Information Administration, *Annual Energy Outlook (2021)*, Table 22, Commercial Sector Energy Consumption, Floorspace, Equipment Efficiency, and Distributed Generation (Available at: <https://www.eia.gov/>

[outlooks/aeo/data/browser/#/?id=32-AEO2021&cases=ref2021&sourcekey=0](https://www.eia.gov/outlooks/aeo/data/browser/#/?id=32-AEO2021&cases=ref2021&sourcekey=0).

<sup>27</sup> U.S. Energy Information Administration, *Annual Energy Outlook (2021)*, Table 23, Industrial

Sector Macroeconomic Indicators (Available at: <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=34-AEO2021&cases=ref2021&sourcekey=0>).

DOE evaluates the effects of amended standards at the national level by comparing a case without such standards (referred to as the no-new-standards case) with standards-case projections that characterize the market for each UFHWST class if DOE were to adopt amended standards at the specified energy efficiency levels for that class. As discussed in the subsections that follow, this analysis requires an examination of both the efficiency of the UFHWST, as well as the efficiency of the appliance supplying heated water to that tank.

1. Energy Efficiency Distribution in the No-New-Standards Case

DOE received limited information regarding the efficiency range of UFHWSTs distributed in commerce in response to its request for comment in the August 2019 ECS RFI. BWC stated that it is appropriate to assume that for this analysis, all UFHWST have R=12.5 insulation (*i.e.*, that they meet the minimum R-value of 12.5 currently required by ASHRAE 90.1). (BWC, No. 5 at p. 3)

To estimate the fraction of equipment sold at or above the current standard, DOE examined the counts and R-values of the records in its Compliance Certification Management System (CCMS) database.<sup>28</sup> DOE found that

there were a minimal number of designs that related to the R-value efficiency levels determined in the engineering analysis, as demonstrated by Table IV.11. However, DOE notes that the data from the CCMS database is a count of *models* at a given efficiency and not a direct reflection of the number of units shipped at that efficiency level. When weighted as a function of shipments, the data shows that the vast majority of shipment are at baseline, as shown in Table IV.13. Consequently, DOE tentatively agrees with the statement from BWC and for this analysis assumed that almost all UFHWST across all capacities are at the baseline efficiency level, R=12.5.

TABLE IV.12—FRACTIONS OF MODEL EFFICIENCY IN CCMS  
[% of records]

Representative tank volume (gal.)	EL 0 (baseline)	EL 1	EL 2
	R=12.5	R=15.62	R=18.75
50	14	2	0
175	21	1	0
375	20	0	0
750	18	0	0
1500	21	0	0
3500	2	0	0
5000	0	0	0

TABLE IV.13—FRACTION OF MODEL EFFICIENCIES AS A FUNCTION OF SHIPMENTS  
[% of records]

Representative tank volume (gal.)	Weight	EL 0 (baseline)	EL 1	EL 2
		R=12.5	R=15.62	R=18.75
50	0.03	3	0	0
175	0.11	10	1	0
375	0.23	23	0	0
750	0.26	26	0	0
1500	0.20	20	0	0
3500	0.16	16	0	0
5000	0.01	1	0	0

DOE requests comment regarding its applied efficiency distribution that 99 percent of all units sold are currently at baseline (R=12.5).

2. Hot Water Supply Boiler Efficiency Trend

As stated previously, a potential standard increasing the insulation rating of UFHWST equipment would reduce thermal losses, which would in turn

reduce the energy used by a building's hot water supply equipment to provide hot water.<sup>29</sup> Determining the impact of reduced UFHWST losses on the connected boiler(s) requires an estimate of the boiler efficiency. To estimate the efficiency of boiler systems, DOE used the No-New-Standards Case (EL0) efficiency distribution data from the May 2016 CWH ECS NOPR<sup>30</sup> to calculate a single, market-weighted,

average efficiency, which is 84.4 percent in 2016. For years beyond 2016 and future years through 2050, DOE used the AEO 2021 data series "Commercial: Stock Average Efficiency: Water Heating: Natural Gas: Reference case" to project the efficiency trend of hot-water supply boilers.<sup>31</sup> DOE assumed no increase in boiler efficiency after 2050 (*i.e.*, the end date for the AEO 2021

<sup>28</sup> See: <https://www.regulations.doe.gov/ccms>.  
<sup>29</sup> While there is a wide range of equipment that building owners can use to produce hot water, for this analysis, DOE assumed that 100 percent of all hot water is produced by a hot water supply boiler. See section IV.E.1.b of this document for details.

<sup>30</sup> Available at: <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0042-0016> (Last accessed: April 8, 2020).

<sup>31</sup> U.S. Energy Information Administration, *Annual Energy Outlook (2021)*, Table 22, Commercial Sector Energy Consumption,

Floorspace, Equipment Efficiency, and Distributed Generation (Available at: <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=32-AEO2021&cases=ref2021&sourcekey=0>) (Last accessed April 23, 2021).

analysis). This efficiency trend is shown in Table IV.14.

TABLE IV.14—AVERAGE STOCK EFFICIENCIES OF HOT-WATER SUPPLY BOILERS FROM 2025–2050

Year	Efficiency (%)
2025 .....	91.5
2030 .....	93.1
2035 .....	94.2
2040 .....	94.8
2045 .....	95.1
2050 .....	95.3

G. Discussion of Other Comments Received

In response to the August 2019 RFI, DOE received several comments in support of the current efficiency standard. BWC stated that the current efficiency requirement (a minimum insulation value of R–12.5) is an appropriate baseline efficiency level. (BWC, No. 5 at p. 2) Similarly, AHRI recommended that DOE maintain the current minimum insulation requirement of R–12.5. (AHRI, No. 6 at p. 2) BWC and A.O. Smith also said that there have not been significant market changes since their last energy conservation standard change and that a revised standard would not result in significant energy savings. (BWC, No. 5 at p. 2; and A.O. Smith, No. 8 at p. 2)

Additionally, BWC submitted comments related to the proposed manufacturer mark-up and the distribution channels used to characterize the UFHWST market in the August 2019 RFI. (BWC, No. 5 at p. 2) A.O. Smith commented that the majority of UFHWSTs are sold as replacement units and stated that major redesigns of existing product lines are very uncommon and potentially cost-prohibitive. (A.O. Smith, No. 8 at p. 2)

As discussed previously, certain economic analyses were not conducted for this NOPD because it was determined they would be of limited use due to the lack of data and high degree of uncertainty regarding the inputs to those analyses. Furthermore, an MIA was also not conducted because of the lack of “clear and convincing” evidence that amended standards would be economically justified or result in significant conservation of energy. If DOE later determines that amended standards are warranted, these comments will be revisited.

V. Analytical Results and Conclusions

The following section addresses the results from DOE’s analyses with respect to the considered energy

conservation standards for UFHWSTs. It addresses the ELs examined by DOE and the projected site energy savings of each of these levels. As discussed previously, certain economic analyses were not conducted for this NOPD because it was determined they would be of limited value due to the lack of data and high degree of uncertainty of the inputs to those analyses.

A. National Impact Analysis

This section presents DOE’s estimates of the site NES that would result from each of the ELs considered as potential amended standards.

1. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for UFHWSTs, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each EL. The savings are measured over the entire lifetime of equipment purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2025–2054). Table V.1 presents DOE’s projections of the site NES for each EL considered for UFHWSTs. The savings were calculated using the approach described in section IV.C of this document.

TABLE V.1—CUMULATIVE NATIONAL ENERGY SAVINGS FOR UFHWSTs; 30 YEARS OF SHIPMENTS [2025–2054]

	Efficiency level	
	1	2
Site Energy (quads) ..	0.011	0.017
Percent Savings Over Baseline (%) .....	15%	26%

OMB Circular A–4<sup>32</sup> requires agencies to present analytical results,

<sup>32</sup> U.S. Office of Management and Budget, *Circular A–4: Regulatory Analysis* (Sept. 17, 2003) (Available at: [https://obamawhitehouse.archives.gov/omb/circulars\\_a004\\_a-4/](https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/)).

<sup>33</sup> Under 42 U.S.C. 6313(a)(6)(C)(i) and (iv), EPCA requires DOE to review its standards for covered ASHRAE equipment every 6 years, and it requires a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. If DOE makes a determination that amended standards are not needed, it must conduct a subsequent review within three years following such a determination. (42 U.S.C. 6313(a)(6)(C)(iii)(II)) Furthermore, if ASHRAE acts to amend ASHRAE Standard 90.1 for any of the enumerated equipment covered by EPCA, DOE is triggered to consider and adopt the amended ASHRAE levels, unless the Department has clear and convincing evidence to support more-stringent standard levels, which would result in significant

including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this proposed determination, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of equipment shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.<sup>33</sup> The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, equipment manufacturing cycles, or other factors specific to UFHWSTs. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE’s analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.2. The impacts are counted over the lifetime of UFHWSTs purchased in 2025 through 2033.

TABLE V.2—CUMULATIVE NATIONAL ENERGY SITE SAVINGS FOR UFHWSTs; 9 YEARS OF SHIPMENTS [2025–2034]

	Efficiency level	
	1	2
Site Energy (quads) ..	0.003	0.005
Percent Savings Over Baseline (%) .....	15%	26%

2. Net Present Value of Consumer Costs and Benefits

As discussed in section IV.D of this document, increasing the size of

additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE adopts the amended ASHRAE levels, compliance with amended Federal energy conservation standards would be required either two or three years after the effective date of the ASHRAE Standard 90.1 amendments (depending upon the equipment type in question). However, if DOE adopts more-stringent standards pursuant to the ASHRAE trigger, compliance with such standards would be required four years after publication of a final rule. (42 U.S.C. 6313(a)(6)(D)) As DOE is evaluating the need to amend the standards, the sensitivity analysis is based on the review timeframe associated with amended standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some equipment, the compliance period may be something other than 3 years.

UFHWSTs could necessitate alterations to doorways and mechanical rooms in certain replacement installations in order to get an UFHWST to its installation destination. Further, due to significant uncertainties regarding the costs of these alterations and the lack of data indicating the likelihood of such alterations being required, at this time, DOE is unable to estimate typical installation costs of UFHWSTs. Therefore, any analysis conducted by DOE regarding the LCC or PBP would be of limited value because of the lack of data and high degree of uncertainty of the inputs to those analyses, and as a result, DOE did not estimate the NPV of consumer costs and benefits.

### B. Proposed Determination

After carefully considering the comments on the August 2019 RFI and the available data and information, DOE has tentatively determined that the energy conservation standards for UFHWSTs do not need to be amended, for the reasons explained in the paragraphs immediately following. DOE will consider all comments received on this proposed determination prior to issuing the next document in this rulemaking proceeding.

EPCA specifies that for any commercial and industrial equipment addressed under 42 U.S.C. 6313(a)(6)(A)(i), including UFHWSTs, DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE Standard 90.1 only if “clear and convincing evidence” shows that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) The “clear and convincing” evidentiary threshold applies both when DOE is triggered by ASHRAE action and when DOE conducts a six-year-lookback rulemaking, with the latter being the basis for the current proceeding.

Because an analysis of potential cost-effectiveness and energy savings first require an evaluation of the relevant technology, DOE first discusses the technological feasibility of amended standards. DOE then evaluates the energy savings potential and cost-effectiveness of potential amended standards.

#### 1. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for UFHWSTs would result in significant additional conservation of energy. (42

U.S.C. 6313(a)(6)(C)(i); 42 U.S.C.

6313(a)(6)(A)(ii)(II))

In the present case, DOE estimates that amended standards for UFHWST would result in energy savings of 0.011 quads at EL 1 and 0.017 quads at EL 2 (the max-tech level) over a 30-year analysis period (2025–2054), as realized by the connected hot-water supply boiler. However, as discussed in section IV.C.3 of this document, DOE has been unable to validate the results of the thermal loss model used for its analysis of energy savings, and consequently, there is considerable uncertainty regarding the accuracy and validity of the projected energy savings generated by that calculated model. Thus, DOE has tentatively determined that it lacks clear and convincing evidence that amended energy conservation standards for UFHWSTs would result in significant additional conservation of energy. (See results in Table V.1.)

#### 2. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for UFHWSTs would be technologically feasible. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) DOE has tentatively determined that increasing the thickness of insulation by up to 1 inch would improve the efficiency of UFHWSTs. As discussed in section IV.B.1 of this document, this increase in insulation thickness can be achieved for jacketed UFHWSTs without resulting in a decrease in the insulative properties of the foam. However, the potential for a decrease in insulative value of foam as the thickness increases above 3 inches thick, which results from changes in foam density, adds uncertainty to the R-values achievable by higher levels of increased insulation thicknesses. Increasing the thickness of insulation by up to 1 inch is achievable with the same insulation processes currently used in commercially-available jacketed UFHWSTs, and, therefore, would be technologically feasible. (See section IV.A.3 of this document for further information.) Hence, DOE has tentatively determined that amended energy conservation standards for UFHWSTs would be technologically feasible.

#### 3. Economic Justification

In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors discussed previously (see section II.A of this document). (42 U.S.C.

6313(a)(6)(C)(i); 42 U.S.C.

6313(a)(6)(B)(ii)(I)–(VII))

One of those seven factors is the savings in operating costs throughout the estimated average life of the product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses of the products that are likely to result from the standard. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(B)(ii)(II)) This factor is typically assessed using the LCC and PBP analysis, as well as the NPV. However, as discussed in sections IV.D and V.A.2 of this document, DOE was unable to calculate the LCC, PBP, and NPV of amended standards, because significant uncertainties in the inputs to these analyses would result in significant uncertainties in the results. Consequently, DOE could not develop economic analyses that would provide “clear and convincing” evidence that amended standards are economically justified.

#### 4. Summary

Based on the reasons stated in the foregoing discussion, DOE is proposing to determine that the energy conservation standards for unfired hot water storage tanks do not need to be amended, having initially determined that it lacks “clear and convincing” evidence that amended standards would be economically justified or result in significant additional conservation of energy. DOE will consider and respond to all comments received on this proposed determination in issuing any final determination.

## VI. Procedural Issues and Regulatory Review

### A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed determination does not constitute a “significant regulatory action” under section 3(f) of Executive Order (E.O.) 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) at OMB.

### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a

substantial number of small entities. As required by E.O. 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 rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (<http://energy.gov/gc/office-general-counsel>).

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The size standards and codes are established by the 2017 North American Industry Classification System (NAICS).

Unfired hot water storage tank manufacturers are classified under NAICS code 333318, "Other Commercial and Service Industry Machinery Manufacturing." The SBA sets a threshold of 1,000 employees or fewer for an entity to be considered as a small business in this category. DOE has conducted a focused inquiry into small business manufacturers of the equipment covered by this rulemaking. The Department used available public information to identify potential small manufacturers. DOE accessed the Compliance Certification Database<sup>34</sup> to create a list of companies that import or otherwise manufacture the unfired hot water storage tanks covered by this proposal. Using these sources, DOE identified a total of 48 distinct manufacturers of unfired hot water storage tanks. Of these manufacturers, DOE identified 37 manufacturers that are potential small businesses.

DOE reviewed this proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is proposing not to amend standards for UFHWSTs, if adopted, the determination would not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would not have a "significant economic impact on a substantial number of small entities." Accordingly, DOE has not prepared an IRFA for this proposed determination. DOE will transmit this 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*

This proposed determination, which proposes to determine that amended energy conservation standards for UFHWSTs are unneeded under the applicable statutory criteria, would impose no new informational or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

#### *D. Review Under the National Environmental Policy Act of 1969*

DOE is analyzing this proposed action in accordance with the National Environmental Policy Act of 1969 (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE anticipates that this action qualifies for categorical exclusion A4 because it is an interpretation or ruling in regard to an existing regulation and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final action.

#### *E. Review Under Executive Order 13132*

E.O. 13132, "Federalism," 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of this proposed determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (See 42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) As this proposed determination would not amend the standards for UFHWSTs, there is no impact on the policymaking discretion of the States. Therefore, no action is required by E.O. 13132.

#### *F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," 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. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 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 section 3(a) and section 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 proposed determination meets the relevant standards of E.O. 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

<sup>34</sup> U.S. Department of Energy Compliance Certification Management System, available at: <https://www.regulations.doe.gov/ccms>.

proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at [https://energy.gov/sites/prod/files/gcprod/documents/umra\\_97.pdf](https://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf).

DOE examined this proposed determination according to UMRA and its statement of policy and determined that the proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

#### H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### I. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 15, 1988), DOE has determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### J. Review Under the 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 Federal agencies to review most disseminations of information to the public under information quality 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: <https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf>. DOE has reviewed this NOPD 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

E.O. 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 OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates 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 Executive Order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed determination, which does not propose to amend energy conservation standards for UFHWSTs, 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 at OIRA. Therefore, it is not a significant energy action, and

accordingly, DOE has not prepared a Statement of Energy Effects.

#### L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government’s scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are “influential scientific information,” which the Bulletin defines as “scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.” *Id.* at 70 FR 2667.

In response to OMB’s Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared Peer Review report pertaining to the energy conservation standards rulemaking analyses.<sup>35</sup> Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for considering amended energy conservation standards in the case of the present action.

## VII. Public Participation

### A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE’s

<sup>35</sup> “Energy Conservation Standards Rulemaking Peer Review Report” (2007) (Available at: <https://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0>).



website: [https://www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=36&action=viewlive](https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=36&action=viewlive). Participants are responsible for ensuring their systems are compatible with the webinar software.

### B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rulemaking, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit requests to speak by email to the Appliance and Equipment Standards Program, [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov). Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this proposed determination and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

### C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period,

interested parties may submit further comments on the proceedings and any aspect of the proposed determination.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed determination. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this proposed determination. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this NOPD. In addition, any person may buy a copy of the transcript from the transcribing reporter.

### D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed determination no later than the date provided in the **DATES** section at the beginning of this proposed determination. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

*Submitting comments via <https://www.regulations.gov>.* The <https://www.regulations.gov> web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical

difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <https://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through <https://www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through <https://www.regulations.gov> before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that <https://www.regulations.gov> provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email also will be posted to <https://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. With this instruction followed, the cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE



electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

**Campaign form letters.** Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

**Confidential Business Information.** Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

#### *E. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposed determination, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests data and information related to achievable R-values of polyurethane foam insulation on jacketed UFHWSTs at thicknesses above 3 inches. DOE also seeks comment on its understanding of the difficulties associated with applying more than 3 inches of foam to jacketed UFHWSTs.

(2) DOE seeks comment on the considered efficiency levels analyzed for UFHWSTs. Additionally, DOE seeks comment on its assumption that polyurethane foam has an R-value per inch of 6.25, up to a maximum thickness of 3 inches.

(3) DOE requests comment on the inputs and assumptions used in its engineering analysis. In particular, DOE requests input on its choice of representative volumes, its assumptions

about the typical coverage of various insulation materials, and its estimated R-values for each insulation material at each EL considered.

(4) DOE requests comment on the appropriateness of its assumption regarding the use of a constant internal water temperature of 140 °F.

(5) DOE requests comment on its assumption regarding the typical ambient temperatures for UFHWSTs installed indoors and outdoors.

(6) DOE requests comment on its assumption that 10 percent of all UFHWST would be installed outdoors. DOE requests information on the typical capacities and R-values of outdoor equipment.

(7) DOE requests comment on its assumption that outdoor installations would be limited to climate zones 1A, 2A, and 2B. DOE requests information or data on the fraction of installations that occur within these, or other, climate zones.

(8) DOE requests comment on its Tank Thermal Loss Model.

(9) DOE requests data and information which can be used to estimate installation costs of UFHWSTs with modified dimensions.

(10) DOE requests information and data characterizing the types of buildings where installation difficulties are likely to occur and to lead to increased installation cost, as well as the frequency with which such installation problems may arise.

(11) DOE requests information and data characterizing the average installation costs for UFHWSTs at all different storage volumes.

(12) DOE requests information and data characterizing the circumstances that would drive the decision to potentially restructure existing building spaces, including doorways and mechanical rooms, when installing a replacement UFHWST. For example, is the decision driven by a minimum building code requirement for door openings?

(13) DOE requests comments generally regarding its stock analysis for UFHWSTs.

(14) DOE requests comment regarding its assumption that there would be only one UFHWST per building.

(15) DOE requests comment regarding its disaggregation of UFHWST stock by sector.

(16) DOE requests comment on its assumption that UFHWSTs are not used for industrial process hot water storage.

(17) DOE requests comment on its assumption of a 12-year lifetime for UFHWSTs similar to commercial electric hot water storage tanks.

(18) DOE requests comment on its use of *AEO 2021* trends as a scaler to project shipments to new construction.

(19) DOE requests comment on its distribution of shipments by storage volume, and on its assumption that the distribution of shipments by storage volume does not change over time.

(20) DOE requests comment regarding its applied efficiency distribution that 99 percent of all units sold are currently at baseline (R-12.5).

### **VIII. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this notification of proposed determination.

#### **Signing Authority**

This document of the Department of Energy was signed on June 3, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and 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 June 3, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S.  
Department of Energy.*

[FR Doc. 2021-11957 Filed 6-9-21; 8:45 am]

**BILLING CODE 6450-01-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. **FAA-2021-0459**; Project Identifier **MCAI-2021-00129-T**]

**RIN 2120-AA64**

#### **Airworthiness Directives; Gulfstream Aerospace LP Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for

certain Gulfstream Aerospace LP Model Gulfstream G280 airplanes. This proposed AD was prompted by a report that during full-scale fatigue testing, a crack was found in the area of the attachment of the wing rib 0 to the front spar. This proposed AD would require non-destructive testing on the forward (front) spar vertical stiffener and rib 0 for any cracking, installation of a doubler to the forward (front) spar and rib 0 attachment, and repair if necessary, as specified in a Civil Aviation Authority of Israel (CAAI) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by July 26, 2021.

**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 <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

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

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

For material that will be incorporated by reference (IBR) in this AD, contact The Civil Aviation Authority of Israel (CAAI), P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972-3-9774665; fax 972-3-9774592; email [aip@mot.gov.il](mailto:aip@mot.gov.il). You may find this IBR material on the CAAI website at <https://www.caa.gov.il>. You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0459.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0459; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3226; email [Tom.Rodriguez@faa.gov](mailto:Tom.Rodriguez@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-2021-0459; Project Identifier MCAI-2021-00129-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

##### 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 Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3226; email [Tom.Rodriguez@faa.gov](mailto:Tom.Rodriguez@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 CAAI, which is the aviation authority for Israel, has issued CAAI AD I-57-2020-06-01, dated January 27, 2021 (CAAI AD I-57-2020-06-01) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Gulfstream Aerospace LP Model Gulfstream G280 airplanes.

This proposed AD was prompted by a report that during full-scale fatigue testing, a crack was found in the area of the attachment of the wing rib 0 to the front spar. The FAA is proposing this AD to address any cracking at the area of the wing rib 0 to the front spar, which could affect the structural integrity of the wing. See the MCAI for additional background information.

#### Related Service Information Under 14 CFR Part 51

CAAI AD I-57-2020-06-01 specifies procedures for non-destructive testing (high frequency, mid frequency, bolt hole eddy current inspections, and a liquid (dye) penetrant inspection) for cracking on the forward (front) spar vertical stiffener and rib 0, installation of a doubler to the forward (front) spar and rib 0 attachment, and repair if necessary. 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 and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

#### Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in CAAI AD I-57-2020-06-01 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

#### Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD

process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, CAAI AD I-57-2020-06-01 will be incorporated by reference in the FAA final rule. This

proposed AD would, therefore, require compliance with CAAI AD I-57-2020-06-01 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in CAAI AD I-57-2020-06-01 that is required for compliance with CAAI AD I-57-2020-06-01 will be available on the internet at <https://www.regulations.gov>

by searching for and locating Docket No. FAA-2021-0459 after the FAA final rule is published.

**Costs of Compliance**

The FAA estimates that this proposed AD affects 23 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
80 work-hours × \$85 per hour = \$6,800*	\$400	*\$7,200	*\$165,600

\* If the actions are accomplished during 4C Check.

The FAA has received no definitive data on which to base the cost estimates for the repair specified in this proposed AD.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

- 1. The authority citation for part 39 continues to read as follows:  
**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

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

**Gulfstream Aerospace LP:** Docket No. FAA-2021-0459; Project Identifier MCAI-2021-00129-T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by July 26, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Gulfstream Aerospace LP Model Gulfstream G280 airplanes,

certificated in any category, as identified in The Civil Aviation Authority of Israel (CAAI) AD I-57-2020-06-01, dated January 27, 2021 (CAAI AD I-57-2020-06-01).

**(d) Subject**

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

**(e) Reason**

This AD was prompted by a report that during full-scale fatigue testing, a crack was found in the area of the attachment of the wing rib 0 to the front spar. The FAA is issuing this AD to address any cracking at the area of the wing rib 0 to the front spar, which could affect the structural integrity of the wing.

**(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, CAAI AD I-57-2020-06-01.

**(h) Exceptions to CAAI AD I-57-2020-06-01**

Where CAAI AD I-57-2020-06-01 requires compliance “not later than 5,000 flight cycles,” this AD requires compliance before the accumulation of 5,000 total flight cycles since the date of issuance of the original Israeli airworthiness certificate or the date of issuance of the original Israeli export certificate of airworthiness.

**(i) No Reporting Requirement**

Although the service information referenced in CAAI AD I-57-2020-06-01 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

- (1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch,

FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: [9-AVS-AIR-730-AMOC@faa.gov](mailto:9-AVS-AIR-730-AMOC@faa.gov). Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

#### (k) Related Information

(1) For CAAI AD I-57-2020-06-01, contact The Civil Aviation Authority of Israel (CAAI), P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972-3-9774665; fax 972-3-9774592; email [aip@mot.gov.il](mailto:aip@mot.gov.il). You may find this CAAI AD on the CAAI website at <https://www.caa.gov.il>. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0459.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3226; email [Tom.Rodriguez@faa.gov](mailto:Tom.Rodriguez@faa.gov).

Issued on June 6, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021-12170 Filed 6-9-21; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2021-0455; Project Identifier 2018-SW-031-AD]

RIN 2120-AA64

#### Airworthiness Directives; Leonardo S.p.a. Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. Model AW189 helicopters. This proposed AD was prompted by fatigue testing and analyses. This proposed AD would require establishing a life limit for a certain part-numbered tail gearbox fitting. 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 July 26, 2021.

**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 <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39-0331-225074; fax +39-0331-229046; or at <https://www.leonardocompany.com/en/home>. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0455; 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 European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101

Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email [kristin.bradley@faa.gov](mailto:kristin.bradley@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-2021-0455; Project Identifier 2018-SW-031-AD" 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 <https://www.regulations.gov>, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

#### Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email [kristin.bradley@faa.gov](mailto:kristin.bradley@faa.gov). Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

## Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0087, dated April 18, 2018 (EASA AD 2018–0087), to correct an unsafe condition for Leonardo S.p.A. Helicopters (formerly Finmeccanica S.p.A., AgustaWestland S.p.A.) Model AW189 helicopters. EASA advises of revisions resulting in Leonardo AW189 Maintenance Manual, Document 89–A–AMPI–00–P, Chapter IV, Airworthiness Limitations, Issue 13 (89–A–AMPI–00–P ALS Issue 13), which includes new and/or more restrictive airworthiness limitations and maintenance tasks since its original issuance. Failure to accomplish those airworthiness limitations and maintenance tasks could result in an unsafe condition.

Accordingly, EASA AD 2018–0087 requires accomplishing the actions specified in 89–A–AMPI–00–P ALS Issue 13 and revising the Aircraft Maintenance Program (AMP) with the actions specified in 89–A–AMPI–00–P ALS Issue 13.

## FAA’s Determination

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

## Related Service Information

The FAA reviewed AW189 Air Vehicle Maintenance Planning Information, 89–B–AMPI–00–P, Chapter 4, Issue 6, dated July 17, 2018 (89–B–AMPI–00–P ALS Issue 6). 89–B–AMPI–00–P ALS Issue 6 specifies various airworthiness limitations information including retirement lives, mandatory inspections, and certification maintenance requirements. 89–B–AMPI–00–P ALS Issue 6 is equivalent to 89–A–AMPI–00–P ALS Issue 13.

## Proposed AD Requirements in This NPRM

This proposed AD would require determining the total hours time-in-service (TIS) and total number of landings of tail gearbox fitting part number (P/N) 4F5350A04152. If the total hours TIS and total number of landings cannot be determined, this proposed AD would require removing the part from service. This proposed AD

would establish a life limit for tail gearbox fitting P/N 4F5350A04152 and require removing the part from service according to the new life limit.

## Differences Between This Proposed AD and the EASA AD

EASA AD 2018–0087 applies to Model AW189 helicopters, whereas this proposed AD would apply to that model helicopter with tail gearbox fitting P/N 4F5350A04152 installed instead. EASA AD 2018–0087 requires accomplishing the actions specified in 89–A–AMPI–00–P ALS Issue 13 and revising the AMP with the actions specified in 89–A–AMPI–00–P ALS Issue 13, whereas this proposed AD would require establishing a life limit for tail gearbox fitting P/N 4F5350A04152 and removing that part from service accordingly instead.

## Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 4 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Replacing a tail gearbox fitting would take about 48 work-hours and parts would cost about \$30,000 for an estimated cost of \$34,080 per helicopter and \$136,320 for the U.S. fleet, per replacement cycle.

## 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, I certify this proposed regulation:

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Leonardo S.p.a.:** Docket No. FAA–2021–0455; Project Identifier 2018–SW–031–AD.

#### (a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 26, 2021.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Leonardo S.p.a. Model AW189 helicopters, certificated in any category, with tail gearbox fitting part number (P/N) 4F5350A04152 installed.

#### (d) Subject

Joint Aircraft Service Component (JASC) Code: 6520, Tail Rotor Gearbox.

#### (e) Unsafe Condition

This AD was prompted by fatigue testing and analyses. The FAA is issuing this AD to prevent parts from remaining in service beyond their fatigue life. The unsafe condition, if not addressed, could result in failure of a part, which could result in loss of control of the helicopter.

#### (f) Compliance

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

**(g) Required Actions**

Before further flight after the effective date of this AD:

(1) Determine the total hours time-in-service (TIS) and total number of landings of tail gearbox fitting P/N 4F5350A04152. For purposes of this AD, a landing is counted anytime a helicopter lifts off into the air and then lands again regardless of the duration of the landing and regardless of whether the engine is shutdown. If the total hours TIS and total number of landings cannot be determined, before further flight, remove the part from service.

(2) Remove any part from service that has reached or exceeded its life limit as follows. Thereafter, remove any part from service on or before reaching its life limit as follows. Tail gearbox fitting P/N 4F5350A04152: 14,600 total hours TIS or 57,300 total landings, whichever occurs first.

**(h) Alternative Methods of Compliance (AMOCs)**

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

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

**(i) Related Information**

(1) For more information about this AD, contact Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email *kristin.bradley@faa.gov*.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018-0087, dated April 18, 2018. You may view the EASA AD on the internet at <https://www.regulations.gov> in Docket No. FAA-2021-0455.

Issued on June 3, 2021.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2021-12039 Filed 6-9-21; 8:45 am]

**BILLING CODE 4910-13-P**

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

**[Docket No. FAA-2021-0454; Project Identifier AD-2021-00006-RRIN 2120-AA64]**

**Airworthiness Directives; Bell Textron Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.) Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Bell Textron Inc. (type certificate previously held by Bell Helicopter Textron Inc.) (Bell) Model 205B helicopters. This proposed AD was prompted by a notification of certain parts needing a life limit. This proposed AD would require determining the total hours time-in-service (TIS) of certain part numbered main rotor grip assemblies (grip assemblies), establishing a life limit for certain part-numbered grip assemblies, removing from service any grip assembly that has reached or exceeded its retirement life, creating a component history card, and removing any grip assembly from service before reaching its retirement life. This proposed AD would also prohibit installing certain grip assemblies unless the life limit was established in accordance with this proposed AD. 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 July 26, 2021.

**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 <https://www.regulations.gov>. Follow the instructions for submitting comments.

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

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

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

**Examining the AD Docket**

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0454; or in person at Docket

Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:**

Kuethe Harmon, Safety Management Program Manager, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5198; email *Kuethe.harmon@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-2021-0454; Project Identifier AD-2021-00006-R" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kuethe Harmon, Safety Management Program Manager, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101

Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5198; email [Kuethe.harmon@faa.gov](mailto:Kuethe.harmon@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 received notification from Bell of established life limits for certain part numbered grip assemblies that were not included in Chapter 4—Airworthiness Limitations Schedule (ALS) of Bell Helicopter 205B Maintenance Manual BHT-205B-MM-1, Revision 1, dated July 15, 1993. Bell states the life limit of 9,000 hours TIS for grip assembly part number (P/N) 204-011-121-005, P/N 204-011-121-113, and P/N 204-011-121-005 was left out of the ALS for Model 205B helicopters. Bell states this may suggest that these part numbers have an unlimited life when installed on Model 205B helicopters, whereas the retirement life is 9,000 hours TIS. This condition, if not addressed, could result in fatigue and failure of the grip assembly and loss of control of the helicopter.

Accordingly, Bell specifies updating the existing ALS to establish a life limit of 9,000 hours TIS for grip assembly P/N 204-011-121-005, P/N 204-011-121-113, and P/N 204-011-121-005.

### FAA's Determination

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

### Proposed AD Requirements in This NPRM

This proposed AD would require, before further flight, determining the total hours TIS of certain part-numbered grip assemblies and removing from service any certain part-numbered grip assembly that has accumulated or exceeded 9,000 total hours TIS. This proposed AD would also require, for certain part-numbered grip assemblies that have not accumulated or exceeded 9,000 total hours TIS, creating a component history card or equivalent record to annotate a life limit of 9,000 total hours TIS and removing these grip assemblies from service before accumulating 9,000 total hours TIS. Finally, this NPRM would prohibit installing any affected grip assembly that has exceeded or accumulated 9,000 hours TIS, and prohibit alternative life limits for any affected grip assembly.

### Costs of Compliance

The FAA estimates that this proposed AD would affect 2 helicopters of U.S. registry. The FAA estimates that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at \$85 per work-hour.

Determining the total hours TIS of each grip assembly and updating the helicopter records would take about 1 work-hour for each grip assembly, for an estimated cost of \$85 per helicopter and \$170 for the U.S fleet.

Replacing each grip assembly would take about 16 work-hours and parts would cost about \$50,000 for an estimated cost of \$51,360 per grip assembly.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Bell Textron Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.);** Docket No. FAA-2021-0454; Project Identifier AD-2021-00006-R.

#### (a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 26, 2021.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Bell Textron Inc. (type certificate previously held by Bell Helicopter Textron Inc.) (Bell) Model 205B helicopters, certificated in any category, with main rotor grip assembly (grip assembly) part number (P/N) 204-011-121-005, P/N 204-011-121-113, or P/N 204-011-121-117 installed.

#### (d) Subject

Joint Aircraft System Component (JASC) Code: 6220, Main Rotor Head.

#### (e) Unsafe Condition

This AD was prompted by a notification of certain parts needing a life limit. The FAA is issuing this AD to prevent a grip assembly remaining in service beyond its fatigue life. The unsafe condition, if not addressed, could result in fatigue and failure of the grip assembly and loss of helicopter control.

#### (f) Compliance

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

#### (g) Required Actions

(1) Before further flight after the effective date of this AD, determine the total hours time-in-service (TIS) of any grip assembly having P/N 204-011-121-005, P/N 204-011-121-113, or P/N 204-011-121-117. Remove from service any grip assembly that has accumulated or exceeded 9,000 total hours TIS. For each grip assembly that has accumulated less than 9,000 total hours TIS, do the following:



(i) Create a component history card or equivalent record to establish a life limit of 9,000 total hours TIS.

(ii) Thereafter, remove from service any grip assembly before it accumulates 9,000 total hours TIS.

(2) Thereafter, no alternative life limits may be approved for any grip assembly P/N 204-011-121-005, P/N 204-011-121-113, or P/N 204-011-121-117.

(3) As of the effective date of this AD, do not install any grip assembly having P/N 204-011-121-005, P/N 204-011-121-113, or P/N 204-011-121-117 on any Model 205B helicopter unless the life limit is established in accordance with this AD.

#### (h) Special Flight Permits

Special flight permits are prohibited.

#### (i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the DSCO Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: [9-ASW-190-COS@faa.gov](mailto:9-ASW-190-COS@faa.gov).

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

#### (j) Related Information

For more information about this AD, contact Kuethe Harmon, Safety Management Program Manager, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5198; email [Kuethe.harmon@faa.gov](mailto:Kuethe.harmon@faa.gov).

Issued on June 3, 2021.

#### Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-12038 Filed 6-9-21; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

#### 27 CFR Parts 478 and 479

[Docket No. ATF 2021R-08; AG Order No. 5070-2021]

RIN 1140-AA55

#### Factoring Criteria for Firearms With Attached “Stabilizing Braces”

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** The Department of Justice (“Department”) proposes amending Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) regulations to clarify when a rifle is “intended to be fired from the shoulder.” The Department proposes factors ATF considers when evaluating firearms equipped with a purported “stabilizing brace” to determine whether these weapons would be considered a “rifle” or “short-barreled rifle” under the Gun Control Act of 1968 (“GCA”) or a “rifle” or “firearm” subject to regulation under the National Firearms Act (“NFA”). This proposed rule is a separate action from the Notice on the Objective Factors for Classifying Weapons with “Stabilizing Braces” published on December 18, 2020, and withdrawn on December 31, 2020. No comments received under the withdrawn notice were considered for this proposed rule, and no comments received pursuant to that notice will be considered as part of this proposed rule. Commenters will need to submit new comments in connection with this proposed rule.

**DATES:** Written comments must be postmarked, and electronic comments must be submitted on or before September 8, 2021. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number ATF 2021R-08, by any of the following methods—

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
- *Mail:* Denise Brown, Mail Stop 6N-518, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 99 New York Ave. NE, Washington, DC 20226; *ATTN:* ATF 2021R-08.

- *Fax:* (202) 648-9741.

*Instructions:* All submissions received should include the agency name and docket number (ATF 2021R-08) for this notice of proposed rulemaking. All properly completed comments received will be posted without change to the Federal eRulemaking portal, [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Denise Brown, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Ave. NE, Washington, DC 20226; telephone: (202) 648-7070 (this is not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Attorney General is responsible for enforcing the GCA, as amended, and the NFA, as amended.<sup>1</sup> This includes the authority to promulgate regulations necessary to enforce the provisions of the GCA and NFA. *See* 18 U.S.C. 926(a); 26 U.S.C. 7801(a)(2)(A)(ii), 7805(a). The Attorney General has delegated the responsibility for administering and enforcing the GCA and NFA to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 CFR 0.130(a)(1)–(2). Accordingly, the Attorney General and ATF have promulgated regulations implementing both the GCA and the NFA. *See* 27 CFR parts 478, 479. The ATF Director delegated the authority to classify firearms pursuant to the GCA and NFA to ATF’s Firearms Technology Criminal Branch (“FTCB”) and the Firearms Technology Industry Services Branch (“FTISB”), within the Firearms and Ammunition Technology Division (“FATD”), Office of Enforcement Programs and Services (“EPS”).<sup>2</sup> FATD supports the firearms industry and the general public by, among other things, responding to technical inquiries and by testing and evaluating firearms voluntarily submitted to ATF for classification under the GCA or NFA. There is no requirement that the firearms industry or the public submit firearms to ATF for evaluation of the firearm’s proper classification under Federal law.

The statutory definitions of “firearm” under the GCA and the NFA are different.<sup>3</sup> In 1934, Congress passed the NFA in order to regulate certain

<sup>1</sup> NFA provisions still refer to the “Secretary of the Treasury.” However, the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(c)(1). Thus, for ease of reference, this notice of proposed rulemaking refers to the Attorney General throughout.

<sup>2</sup> Delegation of Authorities within the Bureau of Alcohol, Tobacco, Firearms and Explosives, Delegation Order 1100.168C (Nov. 5, 2018).

<sup>3</sup> 18 U.S.C. 921(a)(3) (GCA definition of firearm); 26 U.S.C. 5845(a) (NFA definition of firearm).



“gangster” type weapons.<sup>4</sup> These weapons were viewed as especially dangerous and unusual, and, as a result, are subject to taxes and are required to be registered with ATF.<sup>5</sup> 26 U.S.C. 5811, 5821, 5841, 5845. The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), recognized these additional constraints as consistent with the Second Amendment. “We also recognize another important limitation on the right to keep and carry arms. [*United States v. Miller*], 307 U.S. 174 (1939),] said, as we have explained, that the sorts of weapons protected were those ‘in common use at the time.’ 307 U.S., at 179, 59 S. Ct. 816. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of “dangerous and unusual weapons.” *Id.* at 627.

As a result of the different definitions in the GCA and NFA, classification of a weapon as a “firearm” under the GCA

<sup>4</sup> Congress chose to regulate these firearms by taxing them. Therefore, the NFA is part of the Internal Revenue Code.

<sup>5</sup> Courts have recognized the dangerousness and uniqueness of NFA firearms and that possession of unregistered firearms poses a danger to the community. *United States v. Jennings*, 195 F.3d 795, 799 (5th Cir. 1999) (Congress determined that the unregistered possession of the particular firearms regulated under the NFA should be outlawed because of “the virtual inevitability that such possession will result in violence”); see *United States v. Cox*, 906 F.3d 1170 (10th Cir. 2018) (“[T]he historical tradition of prohibiting the carrying of dangerous and unusual weapons” supported limiting the Second Amendment’s protection to weapons “in common use at the time” of ratification. (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008)); *United States v. Marzarella*, 614 F.3d 85, 95 (3rd Cir. 2010) (explaining that a long gun with a shortened barrel is both dangerous and unusual, because “its concealability fosters its use in illicit activity,” and “because of its heightened capability to cause damage”); *United States v. Amos*, 501 F.3d 524, 531 (6th Cir. 2007) (McKeague, J., dissenting) (“[A] sawed-off shotgun can be concealed under a large shirt or coat. . . . [T]he combination of low, somewhat indiscriminate accuracy, large destructive power, and the ability to conceal. . . . makes a sawed-off shotgun useful for only violence against another person, rather than, for example, against sport game.”); *Bezet v. United States*, 276 F. Supp. 3d 576, 611–12 (E.D. La. 2017), *aff’d*, 714 F. App’x. 336 (5th Cir. 2017) (“Prior to the enactment of the NFA, Congress recognized that the country struggled to control the violence wrought by ‘gangsters, racketeers, and professional criminals.’ . . . Similarly to the GCA, the NFA was adopted by Congress to establish a nationwide system to regulate the sale, transfer, license, and manufacturing of certain ‘dangerous weapons’ such as ‘machine guns, sawed-off shotguns, sawed-off rifles, and other firearms, other than pistols and revolvers, which may be concealed on the persons, and silencers.’ . . . [T]he NFA targets ‘certain weapons likely to be used for criminal purposes.’”); *United States v. Gonzalez*, No. 2:10-cr-00967, 2011 WL 5288727, at \*5 (D. Utah Nov. 2, 2011) (“Congress specifically found that ‘short-barreled rifles are primarily weapons of war and have no appropriate sporting use or use for personal protection.’” (quoting S. Rep. No. 90–1501, at 28 (1968))).

or the NFA affects how it is regulated under Federal law. For instance, a weapon classified as a “firearm” under only the GCA is subject to interstate controls, but is not subject to making or transfer taxes, and need not be registered in the National Firearms Registration and Transfer Record (“NFRTR”) as required by the NFA. See 18 U.S.C. 922(a)(1); 26 U.S.C. 5812, 5822, 5841, 5845. In contrast, weapons classified as NFA firearms are generally regulated under both statutes. This includes rifles having a barrel or barrels less than 16 inches in length (also known as “short-barreled rifles”) and shotguns having a barrel or barrels less than 18 inches in length (also known as “short-barreled shotguns.”). Under the NFA and implementing regulations, the term “rifle” is defined to mean “a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger and shall include any such weapon which may be readily restored to fire a fixed cartridge.” 26 U.S.C. 5845(c); 27 CFR 479.11. In addition to the NFA requirements, the GCA also imposes specific restrictions on the transportation, sale, and delivery of “short-barreled rifles” and “short-barreled shotguns.” 18 U.S.C. 922(a)(4), (b)(4). Therefore, FATD’s classifications of a particular firearm allow industry members to plan, develop, and distribute products in compliance with the law, thereby reducing their risk of incurring criminal or civil penalties, or the potential for costly corrective actions, including a possible recall by the manufacturer.

Generally, when FATD evaluates a submitted firearm sample, it examines its overall configuration, physical characteristics, and objective design features that are relevant under the statutory definitions of the GCA and NFA, and any other information that directly affects the classification of a particular firearm configuration as presented by that sample. The numerous configurations, materials, and designs of modern firearms require thorough examination and consideration to ensure proper classification. Even though firearms may have a similar appearance (*i.e.*, shape, size, etc.), an ATF classification of a firearm pertains only to the particular sample submitted because of the vast variations in submissions, the application of different relevant statutes and judicial interpretations of these

statutes, the manufacturer’s or maker’s stated intent,<sup>6</sup> and the objective design features supporting or undercutting that stated intent that may be legally and technically significant.

In recent years, some manufacturers have produced and sold devices (“stabilizing braces”) designed to be attached to large or heavy pistols and that are marketed to help a shooter “stabilize” his or her arm to support single-handed firing. The first individual to submit a forearm brace to determine if it changed the classification of a “pistol” advised ATF that “the AR15 pistol is very difficult to control with the one-handed precision stance due to the forward weight of the weapon and the recoil of the 5.56, 7.62 or 7.62[sic]x39 NATO caliber rounds.”<sup>7</sup> There, the submitter explained that the intent of the brace was to facilitate one-handed firing of the AR–15 pistol for those with limited strength or mobility due to a disability, and to reduce bruising to the forearm when firing with one hand. According to this individual, the brace concept was inspired by the needs of combat veterans with disabilities who still enjoy recreational shooting but could not reliably control heavy pistols without assistance. However, whereas some accessories marketed as “stabilizing braces” may make it easier for a person to fire a weapon with one hand and would not result in a determination that the firearm with the attached brace is a “rifle,” there are other accessories also marketed as “stabilizing braces” that may be attached to a weapon platform for the purpose of circumventing the GCA and NFA prohibitions on the sale, delivery, transportation, or unregistered possession and taxation of “short-barreled rifles.” As described below, the addition of an accessory that is

<sup>6</sup> See *Sig Sauer, Inc. v. Brandon*, 826 F.3d 598 (1st Cir. 2016) (noting that, in the firearms classification context, it is appropriate for ATF to consider “a part’s design features . . . as part of the inquiry into” the intended use of that part). The court noted that “[s]uch an objective approach to ferreting out a party’s intent is a very familiar one in the law. See, e.g., *United States v. Siciliano*, 578 F.3d 61, 77 (1st Cir. 2009) (noting that objective evidence is useful to ‘buttress or rebut direct testimony as to intent’); cf. *Washington v. Davis*, 426 U.S. 229, 253, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976) (Stevens, J., concurring) (‘Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor.’); *United States v. Gaw*, 817 F.3d 1 (1st Cir. 2016) (‘[T]he law is long since settled that the prosecution may prove its case without direct evidence of a defendant’s guilty knowledge so long as the array of circumstantial evidence possesses sufficient persuasive power.’ (quoting *United States v. O’Brien*, 14 F.3d 703, 706 (1st Cir. 1994))).”

<sup>7</sup> Classification request from NST Global LLC (Nov. 8, 2012).

marketed as a “stabilizing brace” to a pistol does not guarantee that the resulting firearm will still be classified as a pistol. Indeed, classifying a firearm based on a limited or singular characteristic (*i.e.* the marketing label of the manufacturer that the item is a “stabilizing brace”), “has the potential to be significantly overinclusive or underinclusive.”<sup>8</sup>

Because short-barreled rifles are among the firearms considered unusual and dangerous, subjecting them to regulation under the NFA, it is especially important that such weapons be properly classified. Indeed, firearms with “stabilizing braces” have been used in at least two mass shootings, with the shooters in both instances reportedly shouldering the “brace” as a stock, demonstrating the efficacy as “short-barreled” rifles of firearms equipped with such “braces.”<sup>9</sup>

The GCA and NFA regulate “firearms” and, with limited exceptions, do not regulate individual components. Accordingly, ATF does not classify unregulated components or accessories alone under the GCA and NFA.<sup>10</sup> However, components or accessories, when attached to a firearm, can affect the classification of a firearm because: (1) A component’s or an accessory’s likely use may be relevant in assessing the manufacturer’s or maker’s purported intent with respect to the design of a firearm; and (2) the design of a component or an accessory may result in a firearm falling within a particular statutory definition. Examples include: (1) The attachment of a forward secondary grip<sup>11</sup> to a “pistol,” where the resulting firearm would no longer be designed to be held and fired with a single hand; and (2) a wallet holster<sup>12</sup>

<sup>8</sup> *Innovator Enters., Inc. v. Jones*, 28 F. Supp. 3d 14, 25 (D.D.C. 2014).

<sup>9</sup> See, e.g., Cameron Knight, *Dayton shooter used a modified gun that may have exploited a legal loophole* USA Today (published Aug. 5, 2019, updated Aug. 6, 2019) <https://www.usatoday.com/story/news/nation/2019/08/05/dayton-shooter-used-gun-may-have-exploited-legal-loophole/1927566001/> (the firearm used in a shooting killing 9 people and wounding 14 had a “pistol brace” used to “skirt[]” regulation of short-barrel rifles); Melissa Macaya *et al.*, *10 killed in Colorado grocery store shooting*, CNN (updated Mar. 23, 2021), [https://www.cnn.com/us/live-news/boulder-colorado-shooting-3-23-21/h\\_0c662370eefaff05eac3ef8d5f29e94](https://www.cnn.com/us/live-news/boulder-colorado-shooting-3-23-21/h_0c662370eefaff05eac3ef8d5f29e94) (reporting that the firearm used in a shooting that killed 10 was an AR–15 pistol with an “arm brace”).

<sup>10</sup> ATF does, however, make these types of classifications under the Arms Export Control Act (“AECA”), 22 U.S.C. 2778, with respect to the permanent importation of “defense articles.”

<sup>11</sup> See *U.S. v. Black*, 739 F.3d 931, 934–36 (6th Cir. 2014).

<sup>12</sup> See *FFL Newsletter*, August 1997, at 5–6 (<https://www.atf.gov/firearms/docs/newsletter/federal-firearms-licenses-newsletter-%E2%80%9393-august-1997/download>).

where the handgun can be fired while inserted, thus changing the classification of these handguns into an “any other weapon.” See 26 U.S.C. 5845(e). A “stabilizing brace,” of which there are several variations, is yet another example of a component or an accessory that may change the classification of the firearm to which it is attached.

ATF’s longstanding and publicly known position is that a firearm does not evade classification under the NFA merely because the firearm is configured with a device marketed as a “stabilizing brace” or “arm brace.”<sup>13</sup> When a purported “stabilizing brace” and an attached weapon’s objective design features indicate that the firearm is actually designed and intended to be fired from the shoulder, such weapon may fall within the scope of the NFA, requiring registration and payment of tax. Accordingly, ATF must evaluate on a case-by-case basis whether a particular firearm configured with a “stabilizing brace” bears the objective features of a firearm designed and intended to be fired from the shoulder and is thus subject to the NFA. The use of a purported “stabilizing brace” cannot be a tool to circumvent the NFA (or the GCA) and the prohibition on the unregistered possession of “short-barreled rifles.”

As the purpose of the NFA is “to regulate certain weapons likely to be used for criminal purposes,” *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517 (1992), ATF cannot ignore the design features of a firearm that place it within the scope of the NFA’s regulation. This is the case even when a manufacturer characterizes or markets a firearm accessory in a manner that suggests a use that does not correspond to its objective design. The characterization of an accessory by the manufacturer, including assertions in advertising, is not dispositive. If ATF’s evaluation of a submitted sample demonstrates that the objective design features of the firearm, as configured, do not support the manufacturer’s purported intent and, in fact, suggest an altogether different intent, ATF will

<sup>13</sup> See ATF, *Open Letter on the Redesign of “Stabilizing Braces,”* (Jan. 16, 2015); and a letter to industry counsel clarifying the 2015 Open Letter, Letter for Mark Barnes, Counsel to SB Tactical, LLC, from Marvin G. Richardson, Assistant Director, ATF Enforcement Programs & Services, 90000:GM, 5000, *Re: Reversal of ATF Open Letter on the Redesign of “Stabilizing Braces,”* (Mar. 21, 2017) (made widely available to the public on various websites, for example, see <https://johnpiercesq.com/wp-content/uploads/2017/03/ATF-Letter-March-21-2017.pdf> and <https://www.sigsauer.com/wp-content/uploads/2017/04/atf-letter-march-21-2017.pdf>).

classify the firearm based on the objective design features, as Federal law requires. See *Sig Sauer, Inc. v. Brandon*, 826 F.3d 598, 601–02 (1st Cir. 2016).

It is estimated that manufacturers of stabilizing braces have sold 3 million stabilizing braces since 2013. ATF has observed that the development and production of rifled barrel weapons with “stabilizing braces” has become more prevalent in the firearms industry and that, consequently, requests for classifications for this kind of firearm design have also increased. ATF has classified several firearms equipped with “stabilizing braces” and the objective features used to make these classifications have been described in letters to the industry as well as in criminal cases. However, ATF has received criticism for not more widely publishing the criteria and for not publishing a definitive approach in the application of that criteria. Therefore, to aid the firearms industry and public in understanding the criteria that FATD considers when evaluating firearm samples that are submitted with an attached “stabilizing brace” or similar component or accessory, ATF proposes a worksheet to be entitled *Factoring Criteria for Rifled Barrel Weapons with Accessories*<sup>14</sup> commonly referred to as “Stabilizing Braces,” ATF Worksheet 4999 (“Worksheet 4999”). The purpose of this worksheet is to allow individuals or members of the firearms industry to evaluate whether a weapon incorporating a “stabilizing brace” that they intend to submit to FATD or offer for sale will be considered a “short-barreled rifle” or “firearm” under the GCA and NFA. FATD will use the criteria within ATF Worksheet 4999 and resulting point value when evaluating and classifying a submitted firearm.

These criteria and worksheet do not apply to firearms with a smooth bore that use shotgun ammunition. These types of firearms, commonly referred to as “pistol grip shotguns,” were never designed to be fired from one hand (*e.g.*, Mossberg Shockwave, Remington Tac-

<sup>14</sup> As used in this rule and worksheet, the term “accessory” is intended as a general term to describe the marketing of items commonly known as “stabilizing braces” and does not affect any ATF determinations whether such items when attached to a handgun are, in fact, “accessories” not necessary for the operation of the handgun, but which enhance its usefulness or effectiveness, or whether they are component parts necessary to properly operate a weapon, such as a rifle. Furthermore, use of that term does not affect any determinations whether such items are “defense articles” under the Arms Export Control Act. Please direct all inquiries as to possible liability for the firearms and ammunition excise tax, 26 U.S.C. 4181–82, to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (“TTB”).

14). ATF has always classified these weapons as GCA “firearms,” not shotguns or pistols, as they do not incorporate a stock, like a shotgun, and are not designed to be fired from one hand, like a pistol. Thus, the addition of a “stabilizing brace” does not assist with single-handed firing, but rather redesigns the firearm to provide surface area for firing from the shoulder.

## II. Application of ATF Worksheet 4999

Similar to the Factoring Criteria for Weapons, ATF Form 4590 (“Form 4590”), which is used for the importation of pistols and revolvers, the proposed ATF Worksheet 4999 has a point system assigning a weighted value to various characteristics of the fully assembled firearm as configured when submitted for classification. A firearm that accumulates less than 4 points in Section II (Accessory Characteristics), and less than 4 points in Section III (Configuration of Weapon), will generally be determined not to be designed to be fired from the shoulder, unless there is evidence that the manufacturer or maker expressly intended to design the weapon to be fired from the shoulder. A firearm that accumulates 4 points or more in Section II or Section III will be determined to be designed and intended to be fired from the shoulder.

As a preliminary factor when evaluating a submitted sample, certain prerequisites (*i.e.*, weapon weight and overall length) will be applied to determine if the firearm will even be considered as a possible pistol or immediately determined to be a rifle, as defined by the applicable statutes. As discussed, “stabilizing braces” were originally marketed as intended to assist persons with disabilities and others lacking sufficient grip strength to control heavier pistols. Therefore, attaching a “stabilizing brace” to a typical pistol, where no assistance is necessary, or attaching one to a firearm so heavy or difficult to control that one-handed shooting is impractical or inaccurate, regardless of the manufacturer’s stated intent, will change the design of the firearm into a rifle intended to be fired from the shoulder. Indeed, the purported “stabilizing brace” would have no design function other than to facilitate the firing of the weapon from the shoulder.

On the proposed Worksheet 4999, objective design characteristics or features that are common to rifles, features associated with shoulder stocks, and those features limiting the ability to use the “stabilizing brace” as an actual brace are assigned point

values. These point values range from 0 to 4 points based upon the degree of the indicator, explained as follows:

- *1 point*: Minor Indicator (the weapon *could* be fired from the shoulder)
- *2 points*: Moderate Indicator (the weapon *may* be designed and intended to be fired from the shoulder)
- *3 points*: Strong Indicator (the weapon *is likely* designed and intended to be fired from the shoulder)
- *4 points*: Decisive Indicator (the weapon *is* designed and intended to be fired from the shoulder)

As in ATF Form 4590, the point values associated with particular features or designs are based upon their relative importance in classifying the firearm under the law. In this case, design factors that are more likely to demonstrate a manufacturer’s or maker’s intent to produce a “short-barreled rifle” and market it as a “braced pistol” accrue more points than those that reveal less evidence. There are certain inherent features that may support a design as a “stabilizing brace” and also a shoulder stock. For example, a large amount of surface area on the rear of a purported “stabilizing brace” may indicate that it is designed to be fired from the shoulder and facilitate its use as a shoulder stock. However, that characteristic may also be the result of incorporating substantial stabilizing support that envelopes the shooter’s arm (*e.g.*, the original SB15 “stabilizing brace”), allowing one-handed firing of a large pistol. These complexities cannot serve merely to exempt all firearms with purported “stabilizing braces” from classification as “rifles.” Indeed, the statutory definitions of “rifle” in the GCA and NFA describe that type of weapon as one “intended to be fired from the shoulder.” 18 U.S.C. 921(a)(7); 26 U.S.C. 5845(c). The ATF Worksheet 4999 is necessary to enforce the law consistently, considering the diversity of firearm designs and configurations.

As stated above, if the total point value of the firearm submitted is equal to or greater than 4—in either Section II or III—then the firearm, with the attached “stabilizing brace,” will be determined to be “designed or redesigned, made or remade, and intended to be fired from the shoulder,” or a “rifle” under the GCA and NFA. The firearm will be classified as a “short-barreled rifle” under the GCA and NFA, and as an NFA “firearm,” if the attached barrel is also less than 16 inches. The ATF Worksheet 4999 will provide the public and the firearms industry with a detailed methodology for ensuring legal compliance.

By using ATF Worksheet 4999, ATF is ensuring uniform consideration and application of these criteria when evaluating firearm samples with attached “stabilizing braces.” ATF also notes that some makers or manufacturers have received a classification of a “stabilizing brace” without it being attached to a firearm or may have received a classification for a firearm that would be considered a NFA firearm under these criteria. Therefore, any maker or manufacturer who has received a classification prior to the effective date of the rule is encouraged to resubmit the firearm with the attached “stabilizing brace” to ensure that the prior classification is consistent with this new rule and to avoid any possible criminal or tax penalties for the continued manufacture, transfer, or possession of a NFA firearm. As iterated above, FATD’s classifications allow industry members to plan and develop products that comply with the law, and thereby reduce their risk of incurring criminal or civil penalties, or the need for corrective actions, including a recall by the manufacturer. ATF recognizes that these factors may affect industry members and members of the public, as they may manufacture or already own firearms with a “stabilizing brace” attached. ATF wants to assist affected persons and industry members and provides the additional information in this proposed rule to aid them in complying with Federal laws and regulations.

## III. Proposed Rule

Given the public interest surrounding these issues, ATF is proposing to amend the definition of “rifle” in 27 CFR 478.11 and 479.11, respectively, by adding a sentence at the end of each definition. The new sentence would clarify that the term “rifle” includes any weapon with a rifled barrel and equipped with<sup>15</sup> an attached “stabilizing brace” that has objective design features and characteristics that indicate that the firearm is designed to be fired from the shoulder, as indicated on ATF Worksheet 4999.

Because the objective design features and characteristics considered will be on a new worksheet to be used by ATF, the Department is also publishing this proposed worksheet—ATF Worksheet

<sup>15</sup> *Cf.*, *e.g.*, *United States v. Charles*, 469 F.3d 402, 407–08 (5th Cir. 2006) (analyzing whether there was sufficient evidence that a firearm was “equipped with” a silencer); *United States v. Thompson*, 82 F.3d 849, 851–53 & n.5 (9th Cir. 1996) (discussing when a firearm may be “equipped with” a silencer); *United States v. Rodriguez*, 53 F.3d 545, 546 (2d Cir. 1995) (analyzing whether a firearm was “equipped with” a silencer).

4999—as part of the preamble to this proposed rule and inviting interested members of the public and industry to provide comment. Similar to ATF Form 4590, used to determine if a firearm is

sporting for purposes of importation, ATF proposes to use ATF Worksheet 4999 to determine if a firearm is designed and intended to be fired from the shoulder, as follows:

*Proposed Factoring Criteria for Rifled Barrel Weapons With Accessories Commonly Referred to as “Stabilizing Braces”*

BILLING CODE 4410-FY-P

U.S. DEPARTMENT OF JUSTICE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES			
<b>FACTORING CRITERIA FOR RIFLED BARREL WEAPONS WITH ACCESSORIES* commonly referred to as “STABILIZING BRACES”</b>			
<b>SUMMARY:</b> This chart lists the factors ATF considers when evaluating a firearm with an accessory (commonly referred to as a “stabilizing braces”) for classification under the National Firearms Act (NFA) or the Gun Control Act (GCA).			
<b>NOTE:</b> The Bureau of Alcohol, Tobacco, Firearms and Explosives reserves the right to preclude classification as a pistol with a “stabilizing braces” for any firearm that achieves an apparent qualifying score but is an attempt to make a “short-barreled rifle” and circumvent the GCA or NFA. *As used in this worksheet, the term “accessory” is intended as a general term to describe the marketing of items commonly known as “stabilizing braces” and does not affect any ATF determinations whether such items when attached to a handgun are, in fact, “accessories” not necessary for the operation of the handgun, but which enhance its usefulness or effectiveness, or whether they are component parts necessary to properly operate a weapon, such as a rifle. Furthermore, use of that term does not affect any determinations whether such items are “defense articles” under the Arms Export Control Act. Please direct all inquiries as to possible liability for the firearms and ammunition excise tax, 26 U.S.C. sections 4181-4182 to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB).			
Weapon:		Explanation:	
Manufacturer/Model			
<b>SECTION I - PREREQUISITES</b>		[Suitability of “Brace” use]	
1. The weapon must weigh at least 64 ounces.			* Weighed with magazine - unloaded / accessories removed
2. The weapon must have an overall length between 12 and 26 inches.			* Length measured with all non-operational accessories removed
Weapon must meet both Prerequisites in order to proceed to Section II.			
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB TOTAL	
<b>SECTION II - Accessory Characteristics</b>		[Determination of use as a “Brace” vs. Stock]	
<b>ACCESSORY DESIGN</b>			
Not based on a known shoulder stock design.	0		
Incorporates shoulder stock design feature(s)	1		
Based on a known shoulder stock design	2		
<b>REAR SURFACE AREA</b>			
Device incorporates features to prevent use as a shouldering device	0		
Minimized Rear Surface lacking features to discourage shouldering	1		
Rear Surface useful for shouldering the firearm	2		
Material added to increase Rear Surface for shouldering	3		
<b>ADJUSTABILITY</b>			
Non-adjustable, fixed design	0		
Adjustable or telescoping attachment designed for shouldering	2		
<b>STABILIZING SUPPORT</b>			
Counterbalance Design - Non-Folding	0		
Counterbalance Design that Folds creating Rear Contact Surface	1		
OR:			
“Fin- type” design WITH Arm Strap	0		
“Fin- type” design WITHOUT Arm Strap	2		
OR:			
“Cuff-type” design that FULLY wraps around arm	0		
“Cuff-type” design that PARTIALLY wraps around arm	1		
“Cuff-type” design that FAILS to wrap around arm	2		
“Split-stock” configuration not designed to wrap around shooter’s arm	3		
<b>SECTION II SCORE ACHIEVED:</b>		SCORE	
Section II Must Score LESS than 4 in order to proceed to Section III			

SECTION III - Configuration of Weapon		[Determination if weapon is shoulder fired]
<b>LENGTH OF PULL - w/Accessory in Rear most "Locked Position"</b>		* Measured from the center of the trigger to the center of the shoulder device / "stabilizing brace"
Less than 10-1/2 Inches	0	
10-1/2 but under 11-1/2 Inches	1	
11-1/2 but under 12-1/2 Inches	2	
12-1/2 but under 13-1/2 Inches	3	
13-1/2 Inches and Over	4	
<b>ATTACHMENT METHOD</b>		
Standard AR-type Pistol Buffer Tube (6-6-1/2 Inches)	0	
AR-type Pistol Buffer Tube with Adjustment Notches (KAK-type)	1	
Adjustable Rifle Buffer Tube	1	
Adjustable PDW-type guide rails	1	
Extended AR-type Pistol Buffer Tube	2	
Inclusion of Folding Adapter extending length of pull	2	
Use of "Spacers" to extend length of pull	2	
Modified shoulder stock with rear replaced by "stabilizing brace"	3	
Attachment method creates an unusable aim-point (slant)	3	
<b>"STABILIZING BRACE" MODIFICATIONS / CONFIGURATION</b>		
"Cuff-type" or "fin-type" design with strap too short to function	2	
"Cuff-type" or "fin-type" design with strap made out of elastic material	2	
"Fin-type" lacking an arm strap	2	
"Cuff-type" design with strap REMOVED	4	
"Brace" accessory modified for shouldering	4	
Modified Shoulder Stock (originally a Shoulder Stock)	4	
<b>PERIPHERAL ACCESSORIES</b>		
Presence of a Hand Stop	2	
Presence of a Secondary Grip (indicating two-handed fire)	4	
Presence of Rifle-type Back-up / Flip-up Sights / Or no sights	1	
Presence of Reflex Sight with FTS Magnifier w/ Limited Eye-Relief	2	
Presence of a Sight/Scope with Eye Relief Incompatible with one-handed fire	4	
Presence of a bipod / monopod	2	
Weapon as configured weighing more than 120 ounces	4	* Weighed with magazine - unloaded
<b>SECTION III SCORE ACHIEVED:</b>		<b>SCORE</b>
<i>(A SCORE OF 4 POINTS OR MORE INDICATES A SHOULDER-FIRED DESIGN)</i>		
<b>CLASSIFICATION:</b>		<b>Rifle or "Braced" Handgun</b>
		ATF WORKSHEET 4999 (5330.5) (5-21)

**BILLING CODE 4410-FY-C****Section I. Prerequisites**

As a preliminary factor when evaluating a submitted sample, certain prerequisites will be applied to determine if the firearm, without the attached "stabilizing brace," will even be considered a suitable weapon for the brace. As described above, "stabilizing braces" were originally marketed as being designed to assist persons with disabilities and others lacking sufficient grip strength to control heavier pistols. Accordingly, FATD will first examine the submitted sample's weapon weight and overall length.

**Weapon Weight.** Weapon weight is a key prerequisite in determining whether a "stabilizing brace" is appropriately used on a weapon. A traditional unloaded 1911-type pistol weighs approximately 39 ounces. Similarly, the

polymer Glock 17 weighs 39 ounces when fully loaded. Weighing just over 2 pounds, these firearms are easily held and fired with one hand without the need for a "stabilizing brace," as such "braces" are designed. This stands in contrast to the weight of the type of pistols or other firearms for which the "stabilizing brace" was designed to be attached. The AR-type pistol, a popular large handgun design, for example, weighs approximately 5 to 7 pounds (i.e., 80 ounces to 112 ounces) based on its configuration. Such weight is more difficult to manipulate and to keep on target, indicating the "stabilizing brace" is in fact intended to assist one-handed fire. Based on the weights stated above, firearms weighing less than 64 ounces/ 4 pounds (weighed with unloaded magazine and accessories removed) are not considered weapons suitable for use

with a "stabilizing brace" accessory because they are more easily held and fired with one hand without the need for a "stabilizing brace."

**Overall Length.** The overall length of a weapon is relevant in classifying it as a "rifle" or a "pistol" because, as a firearm becomes excessive in length, it is increasingly difficult to fire with one hand. The AR-type pistol has an overall length between 18 and 25 inches, depending on barrel length (due to the necessary inclusion of the buffer tube). Other large frame pistols range between 14 and 22 inches, such as the AK-type DRACO, HK SP5, and CZ Scorpion EVO. Firearms possessing an overall length between 12 and 26 inches may be considered pistols for which a "stabilizing brace" could reasonably be attached to support one-handed fire. Firearms with an overall length of less

than 12 inches are considered too short to indicate any need for a “stabilizing brace.” Conversely, firearms exceeding 26 inches in overall length are impractical and inaccurate to fire one handed, even with a “stabilizing brace,” due to imbalance of the weapon.

#### Section II. Accessory Characteristics

If the submitted firearm sample meets the prerequisites of weighing at least 64 ounces and having an overall length between 12 and 26 inches, FATD will analyze various attachment characteristics. For FATD to determine that a weapon with an attached “stabilizing brace” is not, in fact, designed and intended to be fired from the shoulder, the accessory must not have the characteristics of a shoulder stock. These characteristics are as follows:

**Accessory Design.** The design of the accessory when attached is a factor in determining whether the item is actually a “stabilizing brace” or is intended to be utilized as a stock, making the firearm designed to be fired from the shoulder. Specifically, because the NFA or GCA could be circumvented by substituting a “stabilizing brace” for a traditional shoulder stock on a “short-barreled rifle” (“stabilizing braces” sometimes share close similarities with known stocks), the more features a purported “stabilizing brace” has in common with known shoulder stock designs, the more points it will accumulate. “Stabilizing braces” that are not based on any known shoulder stock design will accrue zero points. “Stabilizing braces” that incorporate one or more shoulder stock design features (e.g., adjustment levers or features that allow for the length of the device to be varied in a manner similar to an adjustable shoulder stock, sling mounts,<sup>16</sup> or hardened surfaces) will accrue 1 point. Lastly, “stabilizing braces” that are modified versions of known shoulder stock designs will accrue 2 points.

**Rear Surface Area.** Rear surface area is a design characteristic referring to the area on the rear of the purported “stabilizing brace.” Since the purpose of a “stabilizing brace” is to be secured to a shooter’s forearm, there is no advantage for a manufacturer of “stabilizing braces” to include substantial surface area on the rear of the design unless the brace is attached

to a firearm in order to redesign it to be fired from the shoulder. As with the other design characteristics, rear surface area is a consideration that must be evaluated in light of the overall design. Clearly, larger, more substantial “stabilizing braces” may have more surface area in which to shoulder a firearm. However, while smaller, less substantial “stabilizing brace” designs may have reduced surface area, this shouldering area may still be similar to known shoulder stock designs upon which they are based. The reduced contact area of the flaps to the shooter’s forearm, and the surface area necessary to shoulder the weapon work in tandem to indicate whether the purported “stabilizing brace” is, in fact, a shouldering device.

Any “stabilizing brace” that incorporates a surface area feature that clearly makes it difficult to use as a shouldering device will accrue zero points. A “stabilizing brace” accessory that is designed with only a minimal rear surface area (e.g., a “fin-type”) with which a weapon could possibly be shouldered will accrue 1 point. A “stabilizing brace” accessory that is designed with a rear surface area sufficient to shoulder the firearm, or approximating the rear surface of known shoulder stocks, which allows shouldering the firearm, will accrue 2 points. Finally, a “stabilizing brace” accessory that features material clearly designed to increase rear surface area to facilitate shoulder firing will accrue 3 points.

**Adjustability.** When ATF was first asked to classify an adjustable “stabilizing brace,” it responded that adjustability is “a feature commonly associated with butt stocks/shoulder stocks as well as firearms designed and intended to be fired from the shoulder.”<sup>17</sup> Although ATF ultimately determined that adjustability, in and of itself, is not determinative of a “stabilizing brace’s” design function on a firearm, it remains a significant indicator that the device is designed and intended to be shouldered. Weapons that do not incorporate an adjustable “stabilizing brace” will accrue zero points, while “stabilizing brace” designs that are adjustable will accrue 2 points.

**Stabilizing Support.** To be effective, a “stabilizing brace” must provide support for the weapon through sufficient and stable contact with the shooter’s forearm. Original “stabilizing brace” designs used a substantial amount of hardened material intended to contact a significant portion of the shooter’s forearm, and a strap to secure

the device and limit movement. Later iterations substantially reduced these design features, mimicking the outline of low-profile (*i.e.*, slim design) shoulder stocks. These later designs resulted in less contact with the forearm and instead rely heavily upon a Velcro strap to perform the function of the more substantial flaps present in earlier designs. While the strap may be used to tighten the minimal polymer flaps on top of the arm, these later designs were far less effective at providing stabilizing support—in contrast to the originally stated intent—and increase bruising to the forearm when firing with one hand. These later designs were also similar to the tactical shoulder stocks widely advertised and sold in the marketplace.

Stabilizing support is a vital characteristic because it provides evidence to evaluate the purported purpose of the attached device, which is to provide shooters with forearm support for firing large, heavy handguns. It is therefore important for ATF to consider the various “stabilizing brace” designs and the forearm support they provide. ATF has categorized these different “stabilizing brace” designs into three broad categories: Counterbalance, “Fin-type”, and “Cuff-type.”

Counterbalance designs<sup>18</sup> utilize the weight of the weapon as a lever to push the “stabilizing brace” into the forearm and provide stability for firing. These designs do not typically include a strap because the “stabilizing brace” itself contacts the side and bottom of the shooter’s arm and is held in place by the weight of the firearm, using the shooter’s hand as the fulcrum. However, whether characterized as a method of storage or otherwise, there is no forearm stabilizing purpose in a Counterbalance design that folds closed such that it can no longer be used as a “stabilizing brace.” Indeed, this type of design may create rear surface area such that the “stabilizing brace” may be suitable only as a shoulder stock when closed. The folding feature of the Counterbalance design stands in contrast to the purported intent of the device. This feature presents some evidence that a firearm equipped with a Counterbalance “stabilizing brace” is intended to be fired from the shoulder and therefore will accrue 1 point.

“Fin-type” designs incorporate a thin “blade” designed to rest against the shooter’s arm, and feature a minimal, thin rear surface area. Although originally submitted with the explanation that these devices would incorporate an arm strap or that a sling

<sup>16</sup> The location of a sling or quick detach (QD) mount is an indicator as to the intended use of the accessory. A sling attachment at the rear of the device could be a deterrent from shouldering the weapon, whereas some accessories incorporate QD mounts consistent with known shoulder stock designs.

<sup>17</sup> See FTISB Letter 303984, at 3 (Nov. 30, 2015).

<sup>18</sup> See, e.g., US Patent 10,690,442 B2 June 23, 2020.

could be wrapped around the shooter's arm and provide additional support,<sup>19</sup> the majority of these accessories are now marketed and sold without such a strap, thus virtually eliminating their effectiveness as a "stabilizing brace." "Fin-type" accessories that do not incorporate an arm strap of suitable length or functionality will accrue 2 points, while those that incorporate an arm strap long enough to secure a person's forearm consistent with the purported intent will not accrue any points (zero).

"Cuff-type" designs are by far the most prevalent of all "stabilizing braces," consisting of over two dozen different unique designs. "Cuff-type" "stabilizing braces" have evolved over the past decade, from non-adjustable, large articles into compact designs, clearly based on, or modified from, shoulder stocks. "Cuff-type" "stabilizing braces" vary greatly in design and the classification of firearms with these types of "stabilizing braces" is the most complex of the three categories. The original "cuff-type" designs incorporated large "arm flaps" to fully envelop the forearm and also a strap to limit movement of the cuff by tightening it. These designs were contoured so that a shooter's forearm could easily fit through the cuff and the strap would tighten around the cuff to provide additional arm support. These designs were clearly devised to secure the firearm to the shooter's forearm and were effective in doing so. Therefore, a "cuff-type" "stabilizing brace" that fully wraps around the shooter's forearm (e.g., SB15/SBX-K) will not accrue any points (zero).

Later designs of the "cuff-type" braces possessed arm flaps that lacked contouring and did not provide a suitable opening for the shooter's forearm. These designs relied on softer materials that, while saving on production costs, mimicked the design of popular shoulder stocks and did not provide the same support for single-handed firing of large handguns. These designs could be secured to the shooter's forearm, but the brace rested on top of the arm, and relied on the Velcro strap to secure the firearm to the shooter's arm. Because they are less effective at the stated purpose of stabilizing one-handed firing, it is appropriate that weapons with such devices attached accrue points as these are more evidently designed and intended for another purpose, which is to be fired from the shoulder. Such "cuff-type" "stabilizing braces" that partially wrap around the shooter's

forearm (e.g., SOB/SB-Mini) will accrue 1 point. Finally, those "stabilizing braces" incorporating arm flaps that do not wrap around the shooter's forearm (e.g., SBA3/SB-PDW), thereby providing no arm support, will accrue 2 points.

Further, with the later "split stock" design, which is another "cuff-type" design where the flaps lack arm contouring, "stabilizing brace" developers simply used known or existing stocks, added a slot down the center of the stock, or otherwise slightly altered the original shoulder stock design and contended that these were "stabilizing braces" like any other "cuff-type" design. However, the purpose of such designs is clearly indicated by the fact that they are far more effective when utilized as a shoulder stock than a "stabilizing brace." These types of "stabilizing braces" are difficult to attach to the arm, provide minimal support in one-handed shooting, and are not effective to use as a "stabilizing brace." As such, any "stabilizing brace" that is configured as a "split-stock" (e.g., SBT/FS1913) will accrue 3 points.

### Section III. Configuration of Weapon

This section will be used to evaluate the entire weapon including how the "stabilizing brace" is mounted to the firearm as well as the effectiveness of the brace in single-handed firing as opposed to firing from the shoulder. It will also consider all of the accessories that have been added to affect firing that will be used in conjunction with the "stabilizing brace."

*Length of Pull.* Length of pull is a common measurement of firearms that describes the distance between the trigger and the center of the shoulder stock. This is a measurement that may be used to fit a firearm to a particular shooter. Generally, taller shooters require a longer length of pull and shorter shooters require a shorter length of pull. Adjustable shoulder stocks are commonly available. Patents, advertising material, and other resources make clear that adjustability is meant to facilitate changing the length of pull.<sup>20</sup> Such length of pull measurements are far less relevant when a pistol is involved because a shooter merely requires a device that reaches from the back of the firearm to the forearm. Far less variation exists between shooters in this way. A firearm

with a "stabilizing brace" will accrue more points the further it is positioned rearward, indicating that it is intended for use as a shouldering device. Firearms with "stabilizing braces" that incorporate a length of pull of less than 10½ inches will not accrue any points (zero). However, a length of pull that is between 10½ but under 11½ inches will accrue 1 point, while 11½ but under 12½ will accrue 2 points, 12½ but under 13½ will accrue 3 points, and a length of pull of 13½ inches or more will accrue 4 points as this is a standard length of pull for rifles and is a decisive indicator that the firearm is intended to be fired from the shoulder.

*Attachment Method.* A "stabilizing brace's" attachment method often provides critical insight as to how a firearm is intended to be used. "Stabilizing braces" attached to a standard-length AR-type pistol buffer tube (extending 6 to 6½ inches from the rear of the firearm) will not accrue any points (zero). Use of an AR-type pistol buffer tube with adjustment notches, an adjustable rifle buffer tube, or an adjustable PDW-type guide rail, will accrue 1 point as each indicates the ability to adjust the "stabilizing brace." An extended AR-type pistol buffer tube (greater than 6½ inches), folding adaptors, and the use of "spacers" are all indicators that the "brace" is being positioned to serve as a shouldering device because it increases the "length of pull," thereby allowing a shooter to fire the weapon from the shoulder. Therefore, such firearm will accrue 2 points. Additionally, a shoulder stock that has been modified to incorporate a "stabilizing brace," or any attachment method that results in an unusable aim-point when the "stabilizing brace" is attached is also a strong indicator the weapon is actually intended to be shoulder fired and will accrue 3 points.

*"Stabilizing Brace" Modifications/Configuration.* "Stabilizing brace" accessories that have been modified from their original configuration will accrue additional points. Any "cuff-type" or "fin-type" accessory, which incorporates an arm strap too short to wrap around the shooter's arm or is manufactured from an elastic material (eliminating stabilizing support), will accrue 2 points, as will a "fin-type" accessory lacking an arm strap. Further, if these modifications reconfigure the device into a shoulder stock, 4 points will be accrued. These modifications could include taping or strapping the arm flaps together on a "cuff-type" "stabilizing brace," or adding shouldering surface to a "fin-type" "stabilizing brace."

<sup>20</sup> See, e.g., U.S. Patent 7,762,018 B1 (July 27, 2010) (in which invention "provides structure for mounting the stock body and contains structure for the pre-set system utilized by stock bodies which are adjustable for length. The length of pull system comprises a series of pre-drilled threaded holes 56, which are off-set from a center axis. . . .").

<sup>19</sup> See FTISB Letter 302672 (Sept. 8, 2014).



*Peripheral Accessories.* ATF has examined multiple firearms that include peripheral accessories, often added by the end user, that indicate the weapon is not designed and intended to be held and fired by a single hand. Such accessories include secondary grips, hand-stops, flip-up rifle-type sights, sights/scopes with limited eye-relief, and bipod/monopods.

Certain hand-stop attachments have been determined to protect a shooter's off-hand from being placed in front of the barrel and do not, in and of themselves, redesign a pistol to be fired with more than one hand. However, the presence of such an attachment is an indication the weapon may not be intended to be fired with a single hand, but rather intended to be fired from the shoulder. As such, the presence of a hand-stop will result in 2 points being accrued. Further, the presence of any secondary grip on a weapon with a "stabilizing brace" accessory changes the classification from a one-handed to a two-handed weapon, thereby disqualifying it from being classified as a "braced pistol," and resulting in the subject firearm accruing 4 points.

Installed sights are also indicators as to the intended use of a firearm with an attached "stabilizing brace." ATF has examined numerous AR-type firearms with "stabilizing brace" accessories that lack any sight or that incorporate rifle-type flip-up or back-up iron sights ("BUIS"), which are only partially usable when firing the weapon with one hand. As such, the presence of this type of sight or lack of any sight will accrue 1 point. Further, firearms that incorporate a reflex sight (*e.g.*, Red Dot) in conjunction with a flip-to-the-side ("FTS") magnifier with limited eye relief (distance between the shooter's eye and rear of sight/scope) will accrue 2 points. Finally, any weapon incorporating a sight or scope that possesses an eye relief (distance between the shooter's eye and rear of sight/scope) incompatible with one-

handed firing will accrue 4 points, as this is a decisive indicator that the "stabilizing brace" is being utilized as a shouldering device. For example, a sight would be incompatible with one-handed firing if it cannot be seen clearly when held at arm's length, thus showing the weapon must be shouldered in order for the sight to be used.

Firearms that incorporate or are designed to rest on bipod/monopod accessories generally are not designed and intended to be held and fired by a single hand. Much like hand-stops, bipods/monopods do not necessarily, in and of themselves, change the classification of a "pistol" when installed. However, bipods/monopods offer "stabilizing support" to the firearms to which they are attached, which is often counter-intuitive to an attached "stabilizing brace," for example, Counterbalance "stabilizing brace" designs. Therefore, attachment of a bipod/monopod will accrue 2 points, regardless of the type of "stabilizing brace" attached.

Finally, any complete firearm with an installed "stabilizing brace" that weighs more than 120 ounces (7½ pounds), incorporating end user accessories, will be considered too heavy to be fired with one hand, and will accrue 4 points. The firearm will be weighed as configured, with an *unloaded* magazine. The upper limit of 120 ounces takes into account that in order to fire the weapon, the shooter will insert a loaded magazine, which will typically add an additional 16–32 ounces. For example, a loaded 30-round AR-type magazine with .223 caliber ammunition weighs approximately 16 ounces (1 pound), while a loaded 30-round AK-type magazine with 7.62x39 caliber ammunition weighs approximately 29 ounces (1.8 pounds). Additionally, a 20-round magazine with .308 Winchester caliber ammunition weighs approximately 23 ounces (1.4 pounds). These are typical types of magazines used with one-handed "stabilized"

firing. Firearms may reach a weight where the use of a "stabilizing brace" provides insufficient support for one-handed firing. Indeed, the existence of a "stabilizing brace" on firearms that are too heavy to be "intended to be fired by one hand" indicates that the purported "stabilizing brace" is actually intended as a shouldering device.

Even if a weapon accrues less than 4 points in each section, attempts by a manufacturer or maker to circumvent Federal law by attaching purported "stabilizing braces" in lieu of shoulder stocks may result in classification of those weapons as "rifles" and "short-barreled rifles." While some manufacturers have recognized that there is a market advantage in designing and selling "short-barreled rifles" as "pistols" to customers seeking to avoid tax and registration requirements, "stabilizing braces" are not a method by which the Federal statutes may be circumvented. Therefore, efforts to advertise, sell, or otherwise distribute "short-barreled rifles" as such will result in a classification as a "rifle" regardless of the points accrued on the ATF Worksheet 4999 because there is no longer any question that the intent is for the weapon to be fired from the shoulder.

#### **IV. Application of the Proposed Worksheet to Common "Stabilizing Braces"**

For the purpose of explaining how the factoring criteria in Worksheet 4999 would be implemented, ATF applied the Worksheet 4999 to three weapons with common "stabilizing braces" attached: An AR-type firearm with an SB-Mini accessory, an AR-type firearm with an SBA3 accessory, and an AR-type firearm with a Shockwave Blade accessory. The results of that process follow.

##### *A. AR-Type Firearm With SB-Mini Accessory*

**BILLING CODE 4410-FY-P**



U.S. DEPARTMENT OF JUSTICE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES			
<b>FACTORING CRITERIA FOR RIFLED BARREL WEAPONS WITH ACCESSORIES* commonly referred to as "STABILIZING BRACES"</b>			
<b>SUMMARY:</b> This chart lists the factors ATF considers when evaluating a firearm with an accessory (commonly referred to as a "stabilizing braces") for classification under the National Firearms Act (NFA) or the Gun Control Act (GCA).			
NOTE: The Bureau of Alcohol, Tobacco, Firearms and Explosives reserves the right to preclude classification as a pistol with a "stabilizing braces" for any firearm that achieves an apparent qualifying score but is an attempt to make a "short-barreled rifle" and circumvent the GCA or NFA.  *As used in this worksheet, the term "accessory" is intended as a general term to describe the marketing of items commonly known as "stabilizing braces" and does not affect any ATF determinations whether such items when attached to a handgun are, in fact, "accessories" not necessary for the operation of the handgun, but which enhance its usefulness or effectiveness, or whether they are component parts necessary to properly operate a weapon, such as a rifle. Furthermore, use of that term does not affect any determinations whether such items are "defense articles" under the Arms Export Control Act. Please direct all inquiries as to possible liability for the firearms and ammunition excise tax, 26 U.S.C. sections 4181-4182 to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB).			
Weapon:		Explanation:	
AR-type w/SB-Mini accessory			
<b>SECTION I - PREREQUISITES</b>		[Suitability of "Brace" use]	
1. The weapon must weigh at least 64 ounces	91 ounces	* Weighed with magazine - unloaded / accessories removed	
2. The weapon must have an overall length between 12 and 26 inches	25-1/8	* Length measured with all non-operational accessories removed	
Weapon must meet both Prerequisites in order to proceed to Section II			
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB TOTAL	
<b>SECTION II - Accessory Characteristics</b>		[Determination of use as a "Brace" vs. Stock]	
<b>ACCESSORY DESIGN</b>			
Not based on a known shoulder stock design	0	0	
Incorporates shoulder stock design feature(s)	1		
Based on a known shoulder stock design	2		
<b>REAR SURFACE AREA</b>			
Device incorporates features to prevent use as a shouldering device	0		
Minimized Rear Surface lacking features to discourage shouldering	1		
Rear Surface useful for shouldering the firearm	2	2	
Material added to increase Rear Surface for shouldering	3		
<b>ADJUSTABILITY</b>			
Non-adjustable, fixed design	0		
Adjustable or telescoping attachment designed for shouldering	2		
<b>STABILIZING SUPPORT</b>			
Counterbalance Design - Non-Folding	0		
Counterbalance Design that Folds creating Rear Contact Surface	1		
OR:			
"Fin- type" design WITH Arm Strap	0		
"Fin- type" design WITHOUT Arm Strap	2		
OR:			
"Cuff-type" design that FULLY wraps around arm	0		
"Cuff-type" design that PARTIALLY wraps around arm	1	1	
"Cuff-type" design that FAILS to wrap around arm	2		
"Split-stock" configuration not designed to wrap around shooter's arm	3		
<b>SECTION II SCORE ACHIEVED:</b>		<b>3</b>	
Section II Must Score LESS than 4 in order to proceed to Section III			<b>* Weapon proceeds to Section III</b>
ATF WORKSHEET 4999 (5330.5) (5-21)			

SECTION III - Configuration of Weapon		[Determination if weapon is shoulder fired]
<b>LENGTH OF PULL - w/Accessory in Rear most "Locked Position"</b>		** Measured from the center of the trigger to the center of the shoulder device / "stabilizing brace"
Less than 10-1/2 Inches	0	
10-1/2 but under 11-1/2 Inches	1	
11-1/2 but under 12-1/2 Inches	2	2
12-1/2 but under 13-1/2 Inches	3	
13-1/2 Inches and Over	4	
<b>ATTACHMENT METHOD</b>		
Standard AR-type Pistol Buffer Tube (6-6-1/2 Inches)	0	0
AR-type Pistol Buffer Tube with Adjustment Notches (KAK-type)	1	
Adjustable Rifle Buffer Tube	1	
Adjustable PDW-type guide rails	1	
Extended AR-type Pistol Buffer Tube	2	
Inclusion of Folding Adapter extending length of pull	2	
Use of "Spacers" to extend length of pull	2	
Modified shoulder stock with rear replaced by "stabilizing brace"	3	
Attachment method creates an unusable aim-point (slant)	3	
<b>"STABILIZING BRACE" MODIFICATIONS / CONFIGURATION</b>		
"Cuff-type" or "fin-type" design with strap too short to function	2	
"Cuff-type" or "fin-type" design with strap made out of elastic material	2	
"Fin-type" lacking an arm strap	2	
"Cuff-type" design with strap REMOVED	4	
"Brace" accessory modified for shouldering	4	
Modified Shoulder Stock (originally a Shoulder Stock)	4	
<b>PERIPHERAL ACCESSORIES</b>		
Presence of a Hand Stop	2	
Presence of a Secondary Grip (indicating two-handed fire)	4	
Presence of Rifle-type Back-up / Flip-up Sights / Or no sights	1	1
Presence of Reflex Sight with FTS Magnifier w/ Limited Eye-Relief	2	
Presence of a Sight/Scope with Eye Relief Incompatible with one-handed fire	4	
Presence of a bipod / monopod	2	
Weapon as configured weighing more than 120 ounces	4	** Weighed with magazine - unloaded
<b>SECTION III SCORE ACHIEVED:</b> <i>(A SCORE OF 4 POINTS OR MORE INDICATES A SHOULDER-FIRED DESIGN)</i>		<b>3</b>
<b>CLASSIFICATION:</b>		<b>Pistol with "stabilizing brace"</b>
		ATF WORKSHEET 4999 (5330.5) (5-21)

SB-Mini Accessory



Applying the criteria in Section I, the above firearm was determined to weigh approximately 91 ounces and have an overall length of 25 $\frac{1}{8}$  inches, and thus would be a suitable host firearm for a “stabilizing brace” accessory. In Section II, the firearm would score a total of 3 points. The firearm with attached SB-Mini (sometimes referred to as the SBL-Mini) accessory would score 0 points in Accessory Design for not being based on a known shoulder stock design. In Rear Surface Area, the firearm would accrue 2 points for possessing a rear surface useful for shouldering the firearm. In Adjustability, the firearm would accrue 0 points for not being an adjustable design. Finally, in Stabilizing Support

the firearm would accrue 1 point, as the flaps on the “Cuff-type” design only partially wrapped around a shooter’s forearm. As the firearm would score 3 points in Section II, it would be able to proceed to Section III.

Under Section III, the firearm would score a total of 3 points. In Length of Pull, the firearm was determined to possess a length of pull of approximately 11 $\frac{3}{8}$  inches; thereby it would accrue 2 points. In Attachment Method, the firearm would accrue 0 points as the SB-Mini accessory is attached using a standard-length AR-type pistol buffer tube. In the “Stabilizing Brace” Modification category, the firearm was determined to

have no modifications, and would accrue 0 points. Finally, in the Peripheral Accessories, the firearm possessed rifle-type flip-up sights, which would accrue 1 point. As evaluated, no other accessories were installed onto the firearm. The firearm, in this configuration, would score a total of 3 points in this section, and accordingly would be determined not to be designed and intended to be fired from the shoulder. Therefore, since each section is evaluated separately, the firearm, *as submitted*, would be classified as a pistol with an attached “stabilizing brace” accessory.

*B. AR-Type Firearm With SBA3 Accessory*

U.S. DEPARTMENT OF JUSTICE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES			
<b>FACTORING CRITERIA FOR RIFLED BARREL WEAPONS WITH ACCESSORIES* commonly referred to as "STABILIZING BRACES"</b>			
<b>SUMMARY:</b> This chart lists the factors ATF considers when evaluating a firearm with an accessory (commonly referred to as a "stabilizing braces") for classification under the National Firearms Act (NFA) or the Gun Control Act (GCA).			
NOTE: The Bureau of Alcohol, Tobacco, Firearms and Explosives reserves the right to preclude classification as a pistol with a "stabilizing braces" for any firearm that achieves an apparent qualifying score but is an attempt to make a "short-barreled rifle" and circumvent the GCA or NFA.  *As used in this worksheet, the term "accessory" is intended as a general term to describe the marketing of items commonly known as "stabilizing braces" and does not affect any ATF determinations whether such items when attached to a handgun are, in fact, "accessories" not necessary for the operation of the handgun, but which enhance its usefulness or effectiveness, or whether they are component parts necessary to properly operate a weapon, such as a rifle. Furthermore, use of that term does not affect any determinations whether such items are "defense articles" under the Arms Export Control Act. Please direct all inquiries as to possible liability for the firearms and ammunition excise tax, 26 U.S.C. sections 4181-4182 to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB).			
Weapon:		Explanation:	
AR-type w/SBA3 accessory			
<b>SECTION I - PREREQUISITES</b>		[Suitability of "Brace" use]	
1. The weapon must weigh at least 64 ounces.	89 ounces	* Weighed with magazine - unloaded / accessories removed	
2. The weapon must have an overall length between 12 and 26 inches.	25-1/8	* Length measured with all non-operational accessories removed	
Weapon must meet both Prerequisites in order to proceed to Section II.			
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB TOTAL	
<b>SECTION II - Accessory Characteristics</b>		[Determination of use as a "Brace" vs. Stock]	
<b>ACCESSORY DESIGN</b>			
Not based on a known shoulder stock design	0		
Incorporates shoulder stock design feature(s)	1	1	
Based on a known shoulder stock design	2		
<b>REAR SURFACE AREA</b>			
Device incorporates features to prevent use as a shouldering device	0		
Minimized Rear Surface lacking features to discourage shouldering	1		
Rear Surface useful for shouldering the firearm	2		
Material added to increase Rear Surface for shouldering	3	3	
<b>ADJUSTABILITY</b>			
Non-adjustable, fixed design	0		
Adjustable or telescoping attachment designed for shouldering	2	2	
<b>STABILIZING SUPPORT</b>			
Counterbalance Design - Non-Folding	0		
Counterbalance Design that Folds creating Rear Contact Surface	1		
OR:			
"Fin- type" design WITH Arm Strap	0		
"Fin- type" design WITHOUT Arm Strap	2		
OR:			
"Cuff-type" design that FULLY wraps around arm	0		
"Cuff-type" design that PARTIALLY wraps around arm	1		
"Cuff-type" design that FAILS to wrap around arm.	2	2	
"Split-stock" configuration not designed to wrap around shooter's arm	3		
<b>SECTION II SCORE ACHIEVED:</b>		<b>8</b>	
Section II Must Score LESS than 4 in order to proceed to Section III		*Weapon fails to proceed to Section III	
ATF WORKSHEET 4999 (5330.5) (5-21)			

SECTION III - Configuration of Weapon		[Determination if weapon is shoulder fired]
<b>LENGTH OF PULL</b> - w/Accessory in Rear most "Locked Position"		* Measured from the center of the trigger to the center of the shoulder device / "stabilizing brace"
Less than 10-1/2 Inches	0	
10-1/2 but under 11-1/2 Inches	1	
11-1/2 but under 12-1/2 Inches	2	
12-1/2 but under 13-1/2 Inches	3	<b>3</b>
13-1/2 Inches and Over	4	
<b>ATTACHMENT METHOD</b>		
Standard AR-type Pistol Buffer Tube (6-6-1/2 Inches)	0	
AR-type Pistol Buffer Tube with Adjustment Notches (KAK-type)	1	
Adjustable Rifle Buffer Tube	1	<b>1</b>
Adjustable PDW-type guide rails	1	
Extended AR-type Pistol Buffer Tube	2	
Inclusion of Folding Adapter extending length of pull	2	
Use of "Spacers" to extend length of pull	2	
Modified shoulder stock with rear replaced by "stabilizing brace"	3	
Attachment method creates an unusable aim-point (slant)	3	
<b>"STABILIZING BRACE" MODIFICATIONS / CONFIGURATION</b>		
"Cuff-type" or "fin-type" design with strap too short to function	2	
"Cuff-type" or "fin-type" design with strap made out of elastic material	2	
"Fin-type" lacking an arm strap	2	
"Cuff-type" design with strap REMOVED	4	
"Brace" accessory modified for shouldering	4	
Modified Shoulder Stock (originally a Shoulder Stock)	4	
<b>PERIPHERAL ACCESSORIES</b>		
Presence of a Hand Stop	2	
Presence of a Secondary Grip (indicating two-handed fire)	4	
Presence of Rifle-type Back-up / Flip-up Sights / Or no sights	1	<b>1</b>
Presence of Reflex Sight with FTS Magnifier w/ Limited Eye-Relief	2	
Presence of a Sight/Scope with Eye Relief Incompatible with one-handed fire	4	
Presence of a bipod / monopod	2	
Weapon as configured weighing more than 120 ounces	4	* Weighed with magazine - unloaded
<b>SECTION III SCORE ACHIEVED:</b> (A SCORE OF 4 POINTS OR MORE INDICATES A SHOULDER-FIRED DESIGN)		<b>5</b>
<b>CLASSIFICATION:</b>		<b>Rifle / "short-barreled rifle"</b>
		ATF WORKSHEET 4999 (5330.5) (5-21)

SBA3 Accessory



ATF evaluated an AR-type firearm with the SBA3 accessory, and would determine the above firearm to be designed and intended to be fired from the shoulder. Applying the criteria in Section I, the firearm was determined to weigh approximately 89 ounces and have an overall length of 25 $\frac{1}{8}$  inches, and thus would be a suitable host firearm for a “stabilizing brace” accessory. In Section II, the firearm would score a total of 8 points, precluding it from proceeding to Section III. The firearm with attached SBA3 would accrue 1 point in Accessory Design for incorporating known shoulder stock features, such as an adjustment lever, a Quick Detach (QD) sling mount, and incorporation of hardened polymer-type material. In Rear Surface Area, the firearm would accrue 3 points, as the SBA3 accessory has

additional rear surface material added for use in shouldering. In Adjustability, the firearm would accrue 2 points for being an adjustable design. Finally, in Stabilizing Support the firearm would accrue 2 point, as the flaps on the “Cuff-type” design fail to wrap around a shooter’s forearm.

Although an evaluation under Section III is not necessary as the firearm would have already been determined to be designed to be fired from the shoulder, the firearm was further evaluated for informational purposes. Under Section III, the firearm would score a total of 5 points. In Length of Pull, the firearm was determined to possess a length of pull of approximately 12 $\frac{1}{2}$  inches; thereby it would accrue 3 points. In Attachment Method, the firearm would accrue 1 point as the SBA3 accessory utilizes an M4-type rifle buffer tube.

Under the “Stabilizing Brace” Modification category, the firearm was determined to have no modifications, and would accrue 0 points. Finally, in Peripheral Accessories, the firearm possessed rifle-type flip-up sights, and thereby would accrue 1 point. As evaluated, no other aftermarket components or accessories were installed onto the firearm. The firearm, in this configuration, would score a total of 5 points in this section, and would be determined to be designed and intended to be fired from the shoulder. Therefore, the evaluated firearm, *as submitted*, would be classified as a “rifle.” Further, having a rifled barrel less than 16 inches in length, the firearm would be properly classified as a “short-barreled rifle” and an NFA “firearm.”

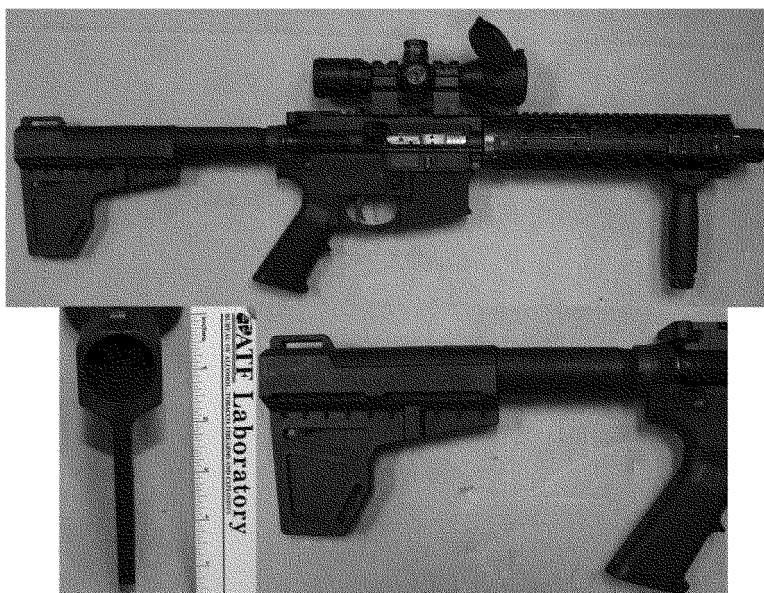
*C. AR-Type Firearm With Shockwave Blade Accessory*

U.S. DEPARTMENT OF JUSTICE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES			
<b>FACTORING CRITERIA FOR RIFLED BARREL WEAPONS WITH ACCESSORIES* commonly referred to as "STABILIZING BRACES"</b>			
<b>SUMMARY:</b> This chart lists the factors ATF considers when evaluating a firearm with an accessory (commonly referred to as a "stabilizing braces") for classification under the National Firearms Act (NFA) or the Gun Control Act (GCA).			
NOTE: The Bureau of Alcohol, Tobacco, Firearms and Explosives reserves the right to preclude classification as a pistol with a "stabilizing braces" for any firearm that achieves an apparent qualifying score but is an attempt to make a "short-barreled rifle" and circumvent the GCA or NFA.  *As used in this worksheet, the term "accessory" is intended as a general term to describe the marketing of items commonly known as "stabilizing braces" and does not affect any ATF determinations whether such items when attached to a handgun are, in fact, "accessories" not necessary for the operation of the handgun, but which enhance its usefulness or effectiveness, or whether they are component parts necessary to properly operate a weapon, such as a rifle. Furthermore, use of that term does not affect any determinations whether such items are "defense articles" under the Arms Export Control Act. Please direct all inquiries as to possible liability for the firearms and ammunition excise tax, 26 U.S.C. sections 4181-4182 to the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB).			
Weapon:		Explanation:	
Manufacturer/Model			
<b>SECTION I - PREREQUISITES</b>		[Suitability of "Brace" use]	
1. The weapon must weigh at least 64 ounces.	93 ounces	* Weighed with magazine - unloaded / accessories removed	
2. The weapon must have an overall length between 12 and 26 inches.	23	* Length measured with all non-operational accessories removed	
Weapon must meet both Prerequisites in order to proceed to Section II.			
INDIVIDUAL CHARACTERISTICS	POINT VALUE	POINT SUB TOTAL	
<b>SECTION II - Accessory Characteristics</b>		[Determination of use as a "Brace" vs. Stock]	
<b>ACCESSORY DESIGN</b>			
Not based on a known shoulder stock design	0	0	
Incorporates shoulder stock design feature(s)	1		
Based on a known shoulder stock design	2		
<b>REAR SURFACE AREA</b>			
Device incorporates features to prevent use as a shouldering device	0		
Minimized Rear Surface lacking features to discourage shouldering	1	1	
Rear Surface useful for shouldering the firearm	2		
Material added to increase Rear Surface for shouldering	3		
<b>ADJUSTABILITY</b>			
Non-adjustable, fixed design	0		
Adjustable or telescoping attachment designed for shouldering	2	2	
<b>STABILIZING SUPPORT</b>			
Counterbalance Design - Non-Folding	0		
Counterbalance Design that Folds creating Rear Contact Surface	1		
OR:			
"Fin- type" design WITH Arm Strap	0		
"Fin- type" design WITHOUT Arm Strap	2	2	
OR:			
"Cuff-type" design that FULLY wraps around arm	0		
"Cuff-type" design that PARTIALLY wraps around arm	1		
"Cuff-type" design that FAILS to wrap around arm	2		
"Split-stock" configuration not designed to wrap around shooter's arm	3		
<b>SECTION II SCORE ACHIEVED:</b>		<b>5</b>	
Section II Must Score LESS than 4 in order to proceed to Section III			<b>*Weapon fails to proceed to Section III</b>
ATF WORKSHEET 4999 (5330.5) (5-21)			

SECTION III - Configuration of Weapon		[Determination if weapon is shoulder fired]
<b>LENGTH OF PULL - w/Accessory in Rear most "Locked Position"</b>		* Measured from the center of the trigger to the center of the shoulder device / "stabilizing brace"
Less than 10-1/2 Inches	0	
10-1/2 but under 11-1/2 Inches	1	
11-1/2 but under 12-1/2 Inches	2	
12-1/2 but under 13-1/2 Inches	3	3
13-1/2 Inches and Over	4	
<b>ATTACHMENT METHOD</b>		
Standard AR-type Pistol Buffer Tube (6-6-1/2 Inches)	0	
AR-type Pistol Buffer Tube with Adjustment Notches (KAK-type)	1	1
Adjustable Rifle Buffer Tube	1	
Adjustable PDW-type guide rails	1	
Extended AR-type Pistol Buffer Tube	2	
Inclusion of Folding Adapter extending length of pull	2	
Use of "Spacers" to extend length of pull	2	
Modified shoulder stock with rear replaced by "stabilizing brace"	3	
Attachment method creates an unusable aim-point (slant)	3	
<b>"STABILIZING BRACE" MODIFICATIONS / CONFIGURATION</b>		
"Cuff-type" or "fin-type" design with strap too short to function	2	
"Cuff-type" or "fin-type" design with strap made out of elastic material	2	
"Fin-type" lacking an arm strap	2	2
"Cuff-type" design with strap REMOVED	4	
"Brace" accessory modified for shouldering	4	
Modified Shoulder Stock (originally a Shoulder Stock)	4	
<b>PERIPHERAL ACCESSORIES</b>		
Presence of a Hand Stop	2	
Presence of a Secondary Grip (indicating two-handed fire)	4	4
Presence of Rifle-type Back-up / Flip-up Sights / Or no sights	1	
Presence of Reflex Sight with FTS Magnifier w/ Limited Eye-Relief	2	
Presence of a Sight/Scope with Eye Relief Incompatible with one-handed fire	4	4
Presence of a bipod / monopod	2	
Weapon as configured weighing more than 120 ounces	4	* Weighed with magazine - unloaded
<b>SECTION III SCORE ACHIEVED:</b> (A SCORE OF 4 POINTS OR MORE INDICATES A SHOULDER-FIRED DESIGN)		<b>14</b>
<b>CLASSIFICATION:</b>		<b>Rifle / "short-barreled rifle"</b>
		A/T/F WORKSHEET 4999 (5330.5) (5-21)

Shockwave Blade Accessory on KAK  
Tube Without Strap



**BILLING CODE 4410-FY-C**

ATF evaluated an AR-type firearm with the Shockwave Blade accessory, and would determine that the firearm, as configured, would be designed and intended to be fired from the shoulder. Applying the criteria in Section I, the firearm was determined to weigh approximately 93 ounces and have an overall length of 23 inches, and thus would be a suitable host firearm for a “stabilizing brace” accessory. In Section II, the submitted firearm would score a total of 5 points, precluding it from proceeding to Section III. The submitted firearm with attached Shockwave Blade accessory would accrue 0 points in Accessory Design for not incorporating known shoulder stock features, such as an adjustment lever. In Rear Surface Area, the firearm would accrue 1 point, as the Shockwave Blade accessory has minimized rear surface area discouraging shouldering. In Adjustability, the firearm would accrue 2 points because it is installed onto a KAK-type tube that incorporates adjustment notches for adjustability. Finally, in Stabilizing Support, the firearm would accrue 2 points for being submitted *without* an arm strap—greatly reducing any stabilizing support.

Although an evaluation under Section III would not be necessary as the firearm would already have been determined to be designed to be fired from the shoulder, the firearm was further evaluated for informational purposes. Under Section III, the firearm would score a total of 14 points. In Length of Pull, the firearm was determined to possess a length of pull of approximately 13 $\frac{1}{4}$  inches, and thereby would accrue 3 points. In Attachment Method, the firearm would accrue 1

point as the Shockwave Blade accessory utilizes a KAK tube with adjustment notches. Under the “Stabilizing Brace” Modification category, the firearm would accrue 2 points for lack of an arm strap. Finally, in Peripheral Accessories, the firearm would accrue an additional 8 points. The firearm was submitted with a secondary forward grip, a determinative indicator that the weapon is not designed to be held and fired with one hand; thereby it would accrue 4 points. Further, the firearm would accrue an additional 4 points due to it being submitted with a scope that has incompatible eye relief for one-handed firing (where the weapon must be fired from the shoulder in order to use the sight). The submitted firearm, as configured, would score a total of 14 points in this section, and would be determined to be designed and intended to be fired from the shoulder. Therefore, the firearm would be classified as a “rifle.” Further, having a rifled barrel less than 16 inches in length, the firearm would be properly classified as a “short-barreled rifle” and an NFA “firearm.”

**V. Options for Affected Persons**

As mentioned, ATF wants to assist affected persons or companies and is providing additional information to aid them in complying with Federal laws and regulations. Below are options for those persons that may be affected upon publication of a final rule.

**A. Current Unlicensed Possessors**

In order to comply with the provisions of the NFA, current unlicensed possessors of a firearm equipped with a “stabilizing brace” and

a barrel length of less than 16 inches that would qualify as a “short-barreled rifle” as indicated on the ATF Worksheet 4999 contained in this proposed rule would need to take one of the following actions before the effective date of a final rule.

(1) Permanently remove or alter the “stabilizing brace” such that it cannot be reattached, thus converting the firearm back to its original pistol configuration (as long as it was originally configured without a stock and as a pistol) and thereby removing it from regulation as a “firearm” under the NFA. Exercising this option would mean the pistol would no longer be “equipped with” the stabilizing brace within the meaning of the proposed rule.

(2) Remove the short barrel and attach a 16-inch or longer barrel to the firearm thus removing it from the provisions of the NFA.

(3) Destroy the firearm. ATF will publish information regarding proper destruction on its website, [www.atf.gov](http://www.atf.gov).

(4) Turn the firearm into your local ATF office.

(5) Complete and submit an Application to Make and Register a Firearm, ATF Form 1 (“Form 1”). As part of the submission, the \$200 tax payment is required with the application. Pursuant to 27 CFR 479.102, the name, city, and state of the maker of the firearm must be properly marked on the firearm. All other markings, placed by the original manufacturer, should be adopted. Proof of submission of the Form 1 should be maintained by all possessors. Documentation establishing submission of Form 1 includes, but is not limited

to, eForm submission acknowledgement, proof of payment, or copy of Form 1 submission with postmark documentation.

*B. Federal Firearms Licensees Not Having Paid Special (Occupational) Tax ("SOT") as a Class 2 Manufacturer Under the NFA*

In order to comply with the provisions of the NFA, Federal firearm licensees not having paid SOT as a Class 2 manufacturer under the NFA currently in possession of a firearm equipped with a "stabilizing brace" and a barrel length of less than 16 inches that would qualify as a "short-barreled rifle" under the ATF Worksheet 4999 contained in this proposed rule would be required to take one of the following actions before the effective date of a final rule.

(1) Options 1–4 listed above.

(2) Complete and submit an ATF Form 1. As part of the submission, the \$200 tax payment is required with the application. Pursuant to 27 CFR 479.102, the name, city, and state of the maker of the firearm must be properly marked on the firearm. All other markings, placed by the original manufacturer, should be adopted. Proof of submission of the Form 1 should be maintained by all possessors.

Documentation establishing submission of Form 1 includes, but is not limited

to, eForm submission acknowledgement, proof of payment, or copy of Form 1 submission with postmark documentation. An importer, manufacturer, or dealer licensed under the GCA, but not the NFA, may not engage in the business of dealing in NFA firearms prior to compliance with the payment of the SOT.

*C. Manufacturers Licensed Under GCA and Qualified Under NFA*

In order to comply with the provisions of the NFA, manufacturers licensed under the GCA and having paid SOT as a Class 2 manufacturer under the NFA currently in possession of a firearm equipped with a "stabilizing brace" and a barrel length of less than 16 inches that would qualify as a "short-barreled rifle" as indicated on the ATF Worksheet 4999 contained in this proposed rule would be required to take one of the following actions before the effective date of a final rule.

(1) Options 1–4 listed above.

(2) Complete and submit an ATF Form 2, Notice of Firearms Manufactured or Imported.

**VI. Statutory and Executive Order Review**

*A. Executive Orders 12866 and 13563*

Executive Order 12866 (Regulatory Planning and Review) directs agencies

to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic benefits, environmental benefits, public health and safety effects, distributive impacts, and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget ("OMB") has determined that this proposed rule is a "significant regulatory action" that is economically significant under section 3(f) of Executive Order 12866, because the rule will have an annual effect on the economy of \$100 million or more. Accordingly, the rule has been reviewed by OMB. As required by OMB Circular A–4 (available at <http://www.whitehouse.gov>), ATF has prepared an accounting statement showing the classification of expenditures associated with the NPRM.

TABLE 1—OMB ACCOUNTING STATEMENT

Category	Primary estimate	Minimum estimate	Maximum estimate	Units			Notes
				Dollar year	Disc (%)	Period covered (years)	
<b>Benefits</b>							
Annualized monetized benefits (\$ Millions/year) .....	N/A	N/A	N/A	2020	7	10	
	N/A	N/A	N/A	2020	3	10	
Annualized quantified .....	N/A	N/A	N/A	2020	7	10	
	N/A	N/A	N/A	2020	3	10	
Qualitative .....	—Prevents manufacturers and individuals from circumventing the requirements of the NFA. —Enhances public safety by reducing the criminal use of such firearms, which are easily concealable from the public and first responders.						
<b>Costs</b>							
Annualized monetized costs (\$ Millions/year) .....	\$125.7	\$125.7	\$303.5	2020	7	10	
	114.7	114.7	278.2	2020	3	10	
Annualized quantified .....	N/A	N/A	N/A	2020	7	10	
	N/A	N/A	N/A	2020	3	10	
Qualitative (unquantified) .....	N/A						
<b>Transfers</b>							
Federal Annualized Monetized (\$ Millions/year) .....	\$20.1	\$20.1	\$46.7	2020	7	10	
	17.2	17.2	40.0	2020	3	10	

TABLE 1—OMB ACCOUNTING STATEMENT—Continued

Category	Primary estimate	Minimum estimate	Maximum estimate	Units			Notes
				Dollar year	Disc (%)	Period covered (years)	
From/To .....	From: Individuals and FFLs			To: Federal Government			
Other Annualized monetized transfers (\$ Million/year) .....	N/A N/A	N/A N/A	N/A N/A	2020 2020	7 3	10 10	
From/To .....	From: N/A			To: N/A			
<b>Effects</b>							
State, local, and/or tribal governments .....	The rule would not have a significant intergovernmental mandate, significant or unique effect on small governments, or have Federalism or Tribal implications.						
Small businesses .....	Approximately 3 manufactures of “stabilizing braces” would be significantly affected by more than 10% of their revenue. May affect 13,210 Type 1 FFLs and 3,881 Type 7 FFLs. Most Type 1 FFLs are small businesses, but likely would need to make less than \$2,357 in revenue to have an impact of 10 percent or more.						
Wages .....	N/A						
Growth .....	N/A						

Table 2 summarizes the affects that this proposed rule would have on the industry and public.

TABLE 2—SUMMARY OF AFFECTED POPULATION, COSTS, AND BENEFITS

Category	Affected populations, costs, and benefits
Affected Population .....	<ul style="list-style-type: none"> <li>• 8 Manufacturers of affected “stabilizing braces.”</li> <li>• 3,881 Manufacturers of “short-barreled rifles” that have a “stabilizing brace” attachment.</li> <li>• 13,210 Dealers of “short-barreled rifles” that have a “stabilizing brace” attachment.</li> <li>• 1.4 million firearm owners who have purchased pistols with “stabilizing braces” attached and those who intend to purchase them in the future.</li> </ul>
Costs (annualized) .....	<ul style="list-style-type: none"> <li>• \$125.7 million at 7%.</li> <li>• \$114.7 million at 3%.</li> </ul>
Total Quantified from Industry, to the Government (annualized).	<ul style="list-style-type: none"> <li>• \$20.1 million at 7%</li> <li>• \$17.2 million at 3%.</li> </ul>
Unquantified Benefits .....	<ul style="list-style-type: none"> <li>• Prevents manufacturers and individuals from circumventing the requirements of the NFA.</li> <li>• Enhances public safety by reducing the criminal use of such firearms, which are easily concealable from the public and first responders.</li> </ul>

Need for Federal Regulatory Action

One of the reasons ATF is considering this proposed regulation is the failure of the market to compensate for negative externalities caused by commercial activity. A negative externality can be the by-product of a transaction between two parties that is not accounted for in the transaction. A negative externality addressed by this proposed rule is that individuals and manufacturers may try to use purported “stabilizing braces” and affix them to firearms to circumvent the requirements of the NFA, which requires registration and taxes to be paid on the making and transfer of NFA

weapons. Further, Congress chose to regulate these items more stringently, finding them to be especially dangerous to the community if not regulated since they are used for violence and criminal activity. *See United States v. Gonzalez*, No. 2:10-cr-00967 CW, 2011 WL 5288727, at \*5 (D. Utah Nov. 2, 2011) (“Congress specifically found that ‘short-barreled rifles are primarily weapons of war and have no appropriate sporting use or use for personal protection.” (quoting S. Rep. No. 90-1501, at 28 (1968))). Therefore, if persons can circumvent the NFA by effectively making unregistered “short-barreled rifles” by using an accessory

such as a “stabilizing brace,” these weapons can continue to proliferate and could pose an increased public safety problem given that they are easily concealable.

Population

Based on subject matter experts (“SMEs”), ATF estimates that there are at least eight manufacturers of “stabilizing braces.” Anecdotal evidence from the manufacturers of the affected “stabilizing braces” indicates that the manufacturers have sold between 3 million and 7 million “stabilizing braces” between the years 2013 to 2020 or over the course of eight

years. For the purposes of this analysis, ATF uses 3 million as the low estimate and primary estimate of affected “stabilizing braces.” This proposed rule may affect upwards of 1.4 million individuals, 13,210 Type 1 Federal Firearms Licensees (“FFLs”), and 3,881 Type 7 FFLs. For more details, please refer to Chapter 2 and each of the specific cost chapters of the standalone Regulatory Impact Analysis (“RIA”) for this proposed rule.

#### Scenario 1: Turn in Firearm to ATF

One option for current owners of firearms with “stabilizing braces” to comply with the proposed rule would be to turn in the firearm with the attached stabilizing brace to ATF for disposal. As the individual possessing the firearm would be permitted to simply remove the “stabilizing brace” and dispose of it, while retaining the firearm, ATF believes it would be unlikely that individuals would turn in their entire firearm into ATF to be destroyed. As ATF does not anticipate anyone choosing to turn in a firearm with an attached stabilizing brace into ATF for disposal, so no cost was attributed to this scenario. Because braces themselves, as firearm accessories or components, are generally not regulated items, ATF requests comments regarding the population, methodology, and scope of this scenario.

#### Scenario 2: Convert Firearm Into a Long-Barreled Rifle

Another scenario is for individuals and FFLs to retain the “stabilizing brace” but convert the firearm into a firearm under the GCA rather than under the NFA. More specifically, they may convert the firearm into a long-barreled rifle. ATF anticipates the minimum need is to purchase a long barrel and handrails. The average cost of a long barrel is \$198.<sup>21</sup> The average cost

<sup>21</sup> <https://www.brownells.com/rifle-parts/barrel-parts/rifle-barrels/ar-15-6mm-arc-barrels-heavy-profile-prod135844.aspx> (accessed May 10, 2021); <https://www.hinterlandoutfitters.com/mossberg-92062-rifled-barrel-wsights-gauge-slug-p-13798.html> (accessed May 10, 2021); <https://www.hinterlandoutfitters.com/mossberg-90831-ulti-barrel-wparkerized-finish-accu-chokes-gauge-ulti-slug-p-13809.html> (accessed May 10, 2021); <https://www.gunpartscorp.com/category/barrels/rifle-barrels/sig-sauer/516-sig> (accessed May 10, 2021); <https://www.gunpartscorp.com/category/barrels/rifle-barrels/sig-sauer/516-sig> (accessed May 10, 2021); <https://www.gunpartscorp.com/category/barrels/rifle-barrels/colt/lightning-cf-rifle> (accessed May 10, 2021); <https://www.midwayusa.com/product/1017600744> (accessed May 10, 2021); <https://www.midwayusa.com/product/1017600744> (accessed May 10, 2021); <https://www.midwayusa.com/product/1017600744> (accessed May 10, 2021); <https://www.midwayusa.com/product/1023207522> (accessed May 10, 2021).

for handrails is \$212,<sup>22</sup> making the cost per firearm \$410.<sup>23</sup> ATF estimates that the average affected individual may own approximately two firearms with an attached “stabilizing brace” while affected FFLs own an average of 3 firearms with an attached “stabilizing brace.” The total cost for this scenario is \$125.1 million. For more details, please refer to Chapter 4 of the standalone RIA. Because braces themselves are generally not regulated items, ATF requests comments regarding the population, methodology, and scope of this scenario.

#### Scenario 3: Apply To Register Under the NFA

Individuals and FFLs could keep their firearms with attached “stabilizing brace” and apply to register under the NFA. Under this scenario, individuals and Type 1 FFL dealers would need to complete a Form 1 for each and every firearm affected by this proposed rule. Type 7 FFL manufacturers would complete a Form 2 for all their affected firearms in inventory. FFLs would then be able to sell these firearms with attached “stabilizing braces” as NFA weapons to individuals who wish to purchase them. The estimated cost for an individual to apply for two firearms with attached “stabilizing braces” would be \$132.<sup>24</sup> The cost per Type 1 FFL to fill out 3 Form 1s is \$985.<sup>25</sup> The cost per Type 7 FFL to fill out one Form 2 is \$47.<sup>26</sup> The total industry cost to this scenario is a one-time cost of \$51.3 million. While individuals and Type 1 FFLs would need to pay a \$200 making tax per firearm under the NFA, because this cost is a transfer payment from industry to the Federal Government, the transfer payment of these taxes is described under section 7.2 of the standalone RIA. For more details, please refer to Chapter 5 of the standalone RIA. Because braces themselves are generally not regulated items, ATF requests comments regarding the population, methodology, and scope of this scenario.

<sup>22</sup> <https://www.aeroprecisionusa.com/ar15-atlas-r-one-m-lok-handguard> (accessed Apr. 14, 2021); <https://slrrifleworks.com/hand-guards/5-56-handguards/ion-series/ion-ultra-lite/> (accessed Apr. 14, 2021); [https://www.odinworks.com/O2\\_Lite\\_M\\_LOK\\_Forend\\_p/f-12-ml-o2.htm](https://www.odinworks.com/O2_Lite_M_LOK_Forend_p/f-12-ml-o2.htm) (accessed Apr. 14, 2021); <https://seekinsprecision.com/noxs-mlok-rail-1-1.html> (accessed Apr. 14, 2021).

<sup>23</sup> \$410 = \$198 + \$212.

<sup>24</sup> \$132 = ((\$16.52 leisure hourly wage \* 4 hours)) \* 2 applications.

<sup>25</sup> \$985 = ((\$82.08 average loaded hourly wage \* 4 hours)) \* 3 applications.

<sup>26</sup> \$47 = \$62.93 average loaded hourly wage \* 0.75 hours.

#### Scenario 4: Permanently Remove or Alter Affected “Stabilizing Braces” Currently in Circulation and Foregone Future Sales

Under this scenario, all parties affected could simply permanently remove or alter their “stabilizing braces” as they see fit. However, ATF has determined this would be a loss of property. There are various types of “stabilizing braces” that would be affected by this proposed rule. We assume that the lost value to owners of a “stabilizing brace” would be at least as much as the cost of a new “stabilizing brace.” The average cost for a “stabilizing brace” is \$236.<sup>27</sup> At 1.9 million “stabilizing braces” affected under this scenario, ATF estimates that the cost for disposing of currently existing “stabilizing braces” would be \$443.9 million.<sup>28</sup>

While these “stabilizing braces” have been purchased over the course of eight years, ATF uses that information to estimate the future sales of these affected “stabilizing braces” forgone. However, in lieu of promulgating a proposed regulation, ATF has been and will continue to use enforcement actions, to include criminal actions, against existing FFLs that manufacture firearms that do not comply with the intent of the law. ATF estimates that in the absence of this proposed rule, these individual enforcement actions against existing FFLs would change the market perception of these “stabilizing braces” and may affect the overall demand for these items regardless of the implementation of the proposed rule. Therefore, ATF estimates that the overall future demand for “stabilizing braces” would decrease by the estimated amount attributed to Type 1 and Type 7 FFLs, making the primary estimate of future “stabilizing braces” 211,178 per year.<sup>29</sup> Thus, ATF estimates that this scenario would mean a loss of \$49.7 million in sales per year.

For more details, please refer to Chapter 6 of the standalone RIA.

<sup>27</sup> <https://www.sb-tactical.com/product/sba3/> (accessed Apr. 22, 2021); <https://www.sb-tactical.com/product/sbm47/> (accessed Apr. 22, 2021); <https://www.sb-tactical.com/product/hkpdw/> (accessed Apr. 22, 2021); <https://www.sb-tactical.com/product/tac13-sba3/> (accessed Apr. 22, 2021); <https://www.sb-tactical.com/product/czpdw/> (accessed Apr. 22, 2021); <https://www.sb-tactical.com/product/fs1913/> (accessed Apr. 22, 2021); <https://www.pewpewtactical.com/best-ar-15-pistols/> (accessed Apr. 22, 2021).

<sup>28</sup> \$443.9 million = ((905,523 individuals \* 2 “stabilizing braces”) + (10,642 Type 1 FFLs \* 3 “stabilizing braces”) + (1,263 Type 7 FFLs \* 32 “stabilizing braces”)) \* \$236 cost of brace.

<sup>29</sup> 211,178 future “stabilizing braces” = 375,000 annual “stabilizing braces” – (13,210 Type 1 FFL \* 3 stabilizing braces) – (3,881 Type 7 FFL \* 32 stabilizing braces).

Because braces themselves are not regulated items, ATF requests comments regarding the population, methodology, and scope of this scenario.

#### Total Cost of the Proposed Rule

This section summarizes the total costs of this proposed rule as described throughout this RIA. As noted in Chapter 5 of the standalone RIA, \$151.0 million was not accounted for in Chapter 5 due to the NFA tax. Because it would be considered a transfer payment from the public to the Federal Government, it was not included in the societal cost of the rule. The annualized cost of this proposed rule would be \$114.7 million and \$125.7 million, at 3 percent and 7 percent, respectively. At this time, the government cost of this proposed rule was not included in this cost assessment.

#### Benefits

This proposed rule would affect attempts by manufacturers and individuals to circumvent the requirements of the NFA and would affect the criminal use of weapons with a purported “stabilizing brace,” such as the shooting incident at the King Soopers in Boulder, Colorado. The purpose of this proposed rule is to amend ATF regulations to clarify when a rifle is “intended to be fired from the shoulder” and to set forth factors that ATF considers when evaluating firearms with an attached purported “stabilizing brace” to determine whether these are “rifles” under the GCA or NFA, and therefore whether they are “firearms” subject to the NFA. Congress placed stricter requirements on the making and possession of “short-barreled rifles” because it found them to pose a significant crime problem. Providing clarity to the public and industry on how ATF enforces the provisions of the NFA through this proposed rule significantly enhances public safety and could reduce the criminal use of such firearms, which are easily concealable from the public and first responders.

#### Alternatives

This section outlines the various alternatives considered when creating this proposed rule. For a more detailed analysis, please refer to Chapters 1 and 10 of the RIA.

*Proposed Alternative—Factoring Criteria for Firearms with Attached Stabilizing Braces.* This proposed alternative would amend the definitions of rifle in 27 CFR 478.11 and 27 CFR 479.11 to indicate that a rifle includes any weapon with a rifled barrel equipped with an accessory or

component purported to assist the shooter to stabilize the weapon while shooting with one hand, commonly referred to as a “stabilizing brace,” that has objective design features and characteristics that facilitate shoulder fire as described in ATF Worksheet 4999.

*Alternative 1—No change alternative.* This alternative has no costs or benefits because it is maintaining the existing status quo. This alternative was considered and not implemented because the NFA requires regulation of certain types of firearms above what is required under the GCA.

*Alternative 2—Simple Criteria.* This alternative would provide very short and simple parameters in terms of how a “stabilizing brace” or stock would be defined, such as length only. This alternative would be easy for the public to read and understand. Where this was feasible, ATF has incorporated these simple and easy to follow parameters.

*Alternative 3—Grandfather all existing firearms with an attached “stabilizing brace.”* In order to enforce the regulation, a complete grandfathering of existing firearms with an attached “stabilizing brace” is problematic in that manufacturers could continue to produce these items that are actually “rifles” under the statutory definition and subject to the NFA and market them as grandfathered firearms with an attached “stabilizing brace” not subject to the same regulation. This could potentially pose an enforcement issue that may not be resolved for years if not decades.

*Alternative 4—Guidance documents.* This alternative would publish a guidance document instead of a rulemaking. While this alternative minimizes cost because compliance in this scenario would be voluntary, it does not meet the objectives outlined in this proposed rule as guidance documents do not have the same force and effect as a regulation. Guidance documents do not in and of themselves impose binding legal obligations. This would pose an enforcement issue. Moreover, issuing a proposed rule invites comments from the public, creating greater transparency and notice.

*Alternative 5—Forgiveness of the NFA Tax.* This alternative would allow individuals and entities that currently have firearms with attached “stabilizing braces” to apply and register firearms under the NFA without paying the \$200 making tax. In this scenario, the societal costs would be the same except there would be no transfer payment. Similar to the proposed rule, the bulk of this cost would be the foregone future revenue and the loss in property for

individuals not applying under the NFA.<sup>30</sup> This scenario was rejected because “stabilizing braces” are not serialized and an individual or entity could merely register all firearms possessed with the intent of later obtaining a “stabilizing brace.” Further, although the “brace” is used on a particular weapon, an individual might register all pistols as SBRs and then attempt to utilize other stocks on these firearms.

#### B. Executive Order 13132

This proposed rule will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), the Attorney General has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

#### D. Regulatory Flexibility Act (RFA)

In accordance with the Regulatory Flexibility Act (“RFA”), ATF prepared an Initial Regulatory Flexibility Analysis (“IRFA”) that examines the impacts of the proposed rule on small entities (5 U.S.C. 601 *et seq.*). The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people.

#### Summary of Findings

ATF performed an IRFA of the impacts on small businesses and other entities from the Factoring Criteria for Firearms with Attached “Stabilizing Braces” proposed rule [2021R-08]. We performed this assessment using the cost information discussed in chapters 2 through 7 of the RIA.

Based on the information from this analysis, we found:

- ATF estimates that this proposed rule would potentially affect at least 8 manufacturers of “stabilizing braces.” Based on SME commentary, it is

<sup>30</sup> However, the real cost to the individual or FFL would be minimal since filling out the form would not necessarily incur an out-of-pocket cost and the tax would not be incurred either.

anticipated 3 of them would go out of business;

- ATF also anticipates that this proposed rule would affect 17,091 FFLs, many of whom would be considered small businesses;

- However, the highest anticipated cost to would be if a Type 1 FFL had 24 “stabilizing braces” (the high estimate that a Type 1 FFL may have) and opted to file under the NFA. Should they own 24 arm braces and opt to apply under the NFA, ATF anticipates these FFLs would need to make \$111,855 in revenue or less in order to incur an impact of 10 percent or more.

- There are no relevant government entities.

#### Preliminary Initial Regulatory Flexibility Analysis

The RFA establishes that agencies must try to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this goal, agencies must solicit and consider flexible regulatory proposals and explain the rationale for their actions to assure that such proposals are given serious consideration.<sup>31</sup>

Under the RFA, we are required to consider what, if any, impact this rule would have on small entities. Agencies must perform a review to determine whether a rule will have such an impact. Because the agency has determined that it will have a significant impact on a substantial number of small entities, the agency has prepared an initial regulatory flexibility analysis as described in the RFA.

Under section 603(b) of the RFA, the regulatory flexibility analysis must provide or address:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules

that may duplicate, overlap, or conflict with the proposed rule; and

- Descriptions of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

#### A Description of the Reasons Why Action by the Agency Is Being Considered

One of the reasons ATF is considering this proposed rule is the failure of the market to compensate for negative externalities caused by commercial activity. A negative externality can be the by-product of a transaction between two parties that is not accounted for in the transaction. A negative externality addressed by this proposed rule is that individuals and manufacturers may try to use purported “stabilizing braces” and affix them to firearms to circumvent the requirements of the NFA, which requires registration and taxes to be paid on the making and transfer of NFA weapons. If persons can circumvent the NFA by effectively making unregistered “short-barreled rifles” by using an accessory such as a “stabilizing brace,” these weapons can continue to proliferate and could pose an increased public safety problem given that they are easily concealable.

#### A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The Attorney General is responsible for enforcing the GCA, as amended, and the NFA, as amended. This responsibility includes the authority to promulgate regulations necessary to enforce the provisions of the GCA and NFA. *See* 18 U.S.C. 926(a); 26 U.S.C. 7801(a)(2)(A), 7805(a). The Attorney General has delegated the responsibility for administering and enforcing the GCA and NFA to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. *See* 28 U.S.C. 599A(b)(1); 28 CFR 0.130(a)(1)–(2). Accordingly, the Department and ATF have promulgated regulations implementing both the GCA and the NFA. *See* 27 CFR parts 478, 479.

This proposed rule would prevent persons from circumventing the NFA by using arm braces as stocks on “short-barreled rifles”. If persons can circumvent the NFA by effectively making unregistered “short-barreled rifles” by using an accessory such as a “stabilizing brace,” these weapons can continue to proliferate and could pose an increased public safety problem given that they are easily concealable.

#### A Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

This rule would affect primarily three manufacturers of certain “stabilizing braces” that have been primarily used as an alternative to a stock on a firearm. It is anticipated they would lose their business of manufacturing “stabilizing braces.”

This proposed rule would also affect FFLs that sell these affected arm braces, and other small retailers of firearm accessories that have invested in the arm brace industry. ATF anticipates that this proposed rule would affect 17,091 FFLs, many of whom would be considered small businesses.

Based on data gleaned from persons who turned in bump stocks, an FFL could have as many as 24 “stabilizing braces” affected by this proposed rule. The majority are likely to own only one. The cost for an FFL could range from \$236 to dispose of one “stabilizing brace” to \$11,185 to submit 24 applications under the NFA. ATF anticipates the majority of FFLs to experience a one-time cost of \$236 for the disposal of one “stabilizing brace.” However, the highest anticipated cost would occur if an FFL had 24 “stabilizing braces” and opted to file under the NFA. Should they own 24 arm braces and opt to apply under the NFA, ATF anticipates that these FFLs would need to make \$111,855 in revenue or less in order to incur an impact of 10 percent or more.

Assuming that the average Type 1 FFL has an average of 3 “stabilizing braces” in inventory and opts to dispose of them, the FFL would lose \$707 per entity. This would mean that the FFL would need to make \$7,071 or less to incur a significant impact.

#### An Identification, to the Extent Practicable, of all Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

This proposed rule does not duplicate or conflict with other Federal rules.

#### Descriptions of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

Please see Chapter 9 of the RIA on the discussion of alternatives. ATF did not create any alternatives specific to small businesses but notes that the majority of the affected businesses would be considered small.

<sup>31</sup> Regulatory Flexibility Act, Public Law 96–354, sec. 2(b), 94 Stat. 1164 (1980).

*E. Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is likely to be considered major as it is economically significant and is projected to have an effect of over \$100 million on the economy in at least the first year of the rule. See 5 U.S.C. 804.

*F. Unfunded Mandates Reform Act of 1995*

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million 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 (“UMRA”), Public Law 104–4, 109 Stat. 48, based on the proposed rule’s impact on State, local, or Tribal governments. However, based on the analysis presented in the RIA, the Department concludes that the proposed rule would impose a Federal mandate on the private sector in excess of \$100 million in expenditures in any one year. The RIA constitutes the written statement containing a qualitative and quantitative assessment of the anticipated costs, benefits, and alternatives required under section 202(a) of the UMRA (2 U.S.C. 1532).

*G. Paperwork Reduction Act of 1995*

This proposed rule would call for collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under the provisions of this proposed rule, there would be a one-time increase in paperwork burdens of NFA applications. This requirement would be added to an existing approved collection covered by OMB control number 1140–0011 and 1140–0012.

*Title:* Application to Make and Register a Firearm.

*OMB Control Number:* OMB 1140–0011.

*Proposed Use of Information:* The ATF Form 1 (5320.1) is required to

register an NFA firearm by any person, other than a qualified manufacturer, who wishes to make and register an NFA firearm. The implementing regulations are in 27 CFR 479.61–479.71. Under the provisions of 26 U.S.C. 5822, no person can make an NFA firearm until he or she has applied for and received approval from the Attorney General (delegated to ATF). Subject to certain exceptions, the making of an NFA firearm is subject to a tax of \$200 (26 U.S.C. 5821). The proposed use of this information is to ensure that applicants are in compliance with relevant laws.

*Description and Number of Respondents:* Currently, there is a total of 25,716 respondents to this information collection. Of these 25,716 respondents, 477 of them are FFLs, 21,879 of them are trusts and legal entities, and 3,360 of them are individuals. For the purposes of this proposed rule, ATF estimates 1,679 FFLs and 375,000 individuals would submit a response due to this proposed rule. For the purposes of this proposed rule, the number of trusts and legal entities were not calculated.

*Frequency of Response:* One time.

*Burden of Response:* Currently, one time. For this proposed rule, 2 to 3 times, depending on the number of firearms.

*Estimate of Total Annual Burden:* The existing hourly burden is 102,808 hours, with an additional 3,020,148 hours due to this proposed rule.

*Title:* Notice of Firearms Manufactured or Imported.

*OMB Control Number:* OMB 1140–0012.

*Proposed Use of Information:* The Notice of Firearms Manufactured or Imported, ATF Form 2 (5320.2), is required of (1) a person who is qualified to manufacture NFA firearms, or (2) a person who is qualified to import NFA firearms to register manufactured or imported NFA firearm(s). In general, under the provisions of 26 U.S.C. 5822, no person can make an NFA firearm until he or she has applied for and received approval from the Attorney General of the United States (delegated to ATF). Subject to certain exceptions, the making of an NFA firearm is subject to a tax of \$200. Section 5841(b) provides that each manufacturer and importer shall register each firearm manufactured or imported. Section 5841(c) provides that each manufacturer shall notify the Attorney General about the manufacture of a firearm, as provided by the regulations. These regulations further stipulate that each importer must obtain authorization as

required by regulations, prior to importing a firearm. Section 5852(c) exempts a qualified manufacturer from payment of the making tax for manufactured firearms. The proposed use of this information is to ensure that applicants are in compliance with relevant laws.

*Description and Number of*

*Respondents:* Currently, there are 14,384 FFLs with SOT.

*Frequency of Response:* One time.

*Burden of Response:* Currently, respondents will respond one time. This proposed rule may require a second response to incorporate a change in inventory.

*Estimate of Total Annual Burden:* Currently, the burden hours is 7,192. This rule would add an additional burden of 1,323 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the OMB for its review of the collections of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB’s decision to approve, modify, or disapprove the proposed collection.

## VII. Public Participation

### A. Comments Sought

ATF requests comments on the proposed rule from all interested persons. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. ATF also requests comments on the costs or benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits. Additionally, ATF requests comments on providing a tax forgiveness for the registration of “short-barreled rifles” pursuant to this proposed rule.

ATF recognizes that individuals may have submitted comments previously in response to a notice ATF published on December 18, 2020, titled “Objective



Factors for Classifying Weapons with ‘Stabilizing Braces.’” 85 FR 82516. However, the notice was withdrawn on December 31, 2020, prior to the comment period ending. 85 FR 86948. Moreover, this proposed rule incorporates different provisions than the December 2020 notice did, including a series of objective factors that are weighted in order to reflect objective decisions based on the design elements of each “stabilizing brace.” Comments received pursuant to that notice have not been, and will not be, considered as part of this proposed rule. Commenters will need to submit new comments in connection with this proposed rule.

All comments should reference this document’s docket number ATF 2021R–08, be legible, and include the commenter’s complete first and last name and full mailing address. ATF may not consider, or respond to, comments that do not meet these requirements or comments containing excessive profanity. ATF will retain all comments as part of this rulemaking’s administrative record. ATF will treat all comments as originals and will not acknowledge receipt of comments. In addition, if ATF cannot read your comment due to technical difficulties and cannot contact you for clarification, ATF may not be able to consider your comment.

ATF will carefully consider all comments, as appropriate, received on or before the closing date, and will give comments after that date the same consideration if practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

In addition to the broader requests for comment outlined above, ATF is interested in specific comments from the public that may help address the following questions:

1. How do current owners of stabilizing braces anticipate that they will choose to comply with this rulemaking if it is finalized? Are owners more likely to permanently remove or alter their braces, turn in their firearms with a brace to ATF, or register them with ATF as NFA firearms and pay the associated tax? Would owners be more likely to register their firearms instead of choosing one of the other options if the tax on the registration is forgiven?

2. How do manufacturers anticipate they will comply with this rulemaking, if finalized? Will manufacturers stop making stabilizing braces, alter their stabilizing braces in some manner so they don’t meet the criteria in this rulemaking, or market their braces differently?

3. Has ATF selected the most appropriate criteria for determining whether a stabilizing brace has made a firearm subject to the NFA? Do commenters have additional criteria that should be considered?

#### *B. Confidentiality*

ATF will make all comments meeting the requirements of this section, whether submitted electronically or on paper, available for public viewing at ATF and on the internet through the Federal eRulemaking Portal, and subject to the Freedom of Information Act (5 U.S.C. 552). Commenters who do not want their name or other personal identifying information posted on the internet should submit comments by mail or facsimile, along with a separate cover sheet containing their personal identifying information. Both the cover sheet and comment should reference this docket number (2021R–08). For comments submitted by mail or facsimile, information contained on the cover sheet will not appear when posted on the internet but any personal identifying information that appears within a comment will not be redacted by ATF and will appear on the internet.

A commenter may submit to ATF information identified as proprietary or confidential business information. The commenter shall place any portion of a comment that is proprietary or confidential business information under law on pages separate from the balance of the comment with each page prominently marked “PROPRIETARY OR CONFIDENTIAL BUSINESS INFORMATION” at the top of the page.

ATF will not make proprietary or confidential business information submitted in compliance with these instructions available when disclosing the comments that it received but will disclose that the commenter provided proprietary or confidential business information that ATF is holding in a separate file to which the public does not have access. If ATF receives a request to examine or copy this information, it will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). In addition, ATF will disclose such proprietary or confidential business information to the extent required by other legal process.

#### *C. Submitting Comments*

Submit comments in any of three ways (but do not submit the same comment multiple times or by more than one method). Hand-delivered comments will not be accepted. Comments not satisfying these

requirements may not be considered by ATF.

- *Federal eRulemaking Portal:* ATF recommends that you submit your comments to ATF via the Federal eRulemaking portal at [www.regulations.gov](http://www.regulations.gov) and follow the instructions. Comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that is provided after you have successfully uploaded your comment.

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments should appear in minimum 12-point font size (.17 inches), include the commenter’s first and last name and full mailing address, be signed, and may be of any length. Mailed comments will be treated as timely if they are postmarked on or before the last day of the comment period.

- *Facsimile:* Submit comments by facsimile transmission to (202) 648–9741. Faxed comments must:

1. Be legible and appear in minimum 12-point font size (.17 inches);
2. Be on 8½” x 11” paper;
3. Be signed and contain the commenter’s complete first and last name and full mailing address; and
4. Be no more than five pages long.

#### *D. Request for Hearing*

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director of ATF within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

#### *Disclosure*

Copies of this proposed rule and the comments received in response to it will be available through the Federal eRulemaking portal, at [www.regulations.gov](http://www.regulations.gov) (search for RIN 1140–AA55), and for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E–063, 99 New York Ave. NE, Washington, DC 20226; telephone: (202) 648–8740.

#### **List of Subjects**

##### *27 CFR Part 478*

Administrative practice and procedure, Arms and munitions, Exports, Freight, Imports, Intergovernmental relations, Law enforcement officers, Military



personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

#### 27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Excise taxes, Exports, Imports, Military personnel, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Transportation.

#### Authority and Issuance

For the reasons discussed in the preamble, 27 CFR parts 478 and 479 are proposed to be amended as follows:

### PART 478—COMMERCE IN FIREARMS AND AMMUNITION

■ 1. The authority citation for 27 CFR part 478 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 18 U.S.C. 921–931; 44 U.S.C. 3504(h).

■ 2. In § 478.11, add a sentence to the end of the definition of “rifle,” to read as follows:

#### § 478.11 Meaning of terms.

\* \* \* \* \*

*Rifle.* \* \* \* The term shall include any weapon with a rifled barrel equipped with an accessory or component purported to assist the shooter stabilize the weapon while shooting with one hand, commonly referred to as a “stabilizing brace,” that has objective design features and characteristics that facilitate shoulder fire, as indicated on Factoring Criteria for Rifled Barrel Weapons with Accessories commonly referred to as “Stabilizing Braces,” ATF Worksheet 4999, published on [EFFECTIVE DATE OF THE FINAL RULE].

\* \* \* \* \*

### PART 479—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

■ 3. The authority citation for 27 CFR part 479 continues to read as follows:

**Authority:** 26 U.S.C. 5812; 26 U.S.C. 5822; 26 U.S.C. 7801; 26 U.S.C. 7805.

■ 4. In § 479.11, add a sentence to the end of the definition of “rifle”, to read as follows:

#### § 479.11 Meaning of terms.

\* \* \* \* \*

*Rifle.* \* \* \* The term shall include any weapon with a rifled barrel equipped with an accessory or component purported to assist the shooter stabilize the weapon while shooting with one hand, commonly referred to as a “stabilizing brace,” that has objective design features and

characteristics that facilitate shoulder fire, as indicated on Factoring Criteria for Rifled Barrel Weapons with Accessories commonly referred to as “Stabilizing Braces,” ATF Worksheet 4999, published on [EFFECTIVE DATE OF THE FINAL RULE].

\* \* \* \* \*

Dated: June 7, 2021.

**Merrick B. Garland,**  
Attorney General.

[FR Doc. 2021–12176 Filed 6–9–21; 8:45 am]

**BILLING CODE 4410-FY-P**

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG–2021–0214]

RIN 1625-AA08

#### Special Local Regulation; Breton Bay, McIntosh Run, Leonardtown, MD

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish special local regulations for certain waters of Breton Bay and McIntosh Run. This action is necessary to provide for the safety of life on these navigable waters located at Leonardtown, MD, during a high-speed power boat demonstration event on July 31, 2021, and August 1, 2021. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Event Patrol Commander. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 25, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2021–0214 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email MST1 Shaun Landante, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2570, email *D05-*

*DG-SectorMD-NCR-MarineEvents@uscg.mil*.

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
PATCOM Patrol Commander  
§ Section  
U.S.C. United States Code

##### II. Background, Purpose, and Legal Basis

The Southern Maryland Boat Club of Leonardtown, MD, has notified the Coast Guard that it will be conducting the Southern Maryland Boat Club Wharf Summer Regatta from 9:30 a.m. to 4 p.m. on July 31, 2021, and from 10:15 a.m. to 4 p.m. on August 1, 2021. The high-speed boat event consists of approximately 50 participating vintage and historic race boats—including runabouts, v-bottoms, tunnel hulls, and hydroplanes—12 to 21 feet in length. The boats will be participating in an exhibition, operating in heats along a marked racetrack-type course 1 mile in length and 150 feet in width, located in Breton Bay and McIntosh Run at Leonardtown, MD. The Regatta is not a competition, but rather a demonstration of the vintage race craft. Hazards from the high-speed power boat demonstration event include participants operating within and adjacent to designated navigation channels and interfering with vessels intending to operate within those channels, as well as operating within approaches to local public boat landings. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the high-speed power boat event would be a safety concern for anyone intending to operate within certain waters of Breton Bay and McIntosh Run at Leonardtown, MD, operating in or near the event area.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the more typical 30 days for this notice of proposed rulemaking. The Coast Guard believes the 15-day comment period still provides for a reasonable amount of time for interested parties to review the

proposal and provide informed comments on it while also ensuring that the Coast Guard has time to review and respond to any significant comments and has final rule in effect in time for the scheduled event.

### III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 7 a.m. on July 31, 2021, through 6 p.m. on August 1, 2021. The special local regulation would be enforced from 7 a.m. through 6 p.m. on July 31st and 7 a.m. through 6 p.m. on August 1st. The regulated area would cover all navigable waters of Breton Bay and McIntosh Run, immediately adjacent to Leonardtown, MD, within an area bounded by lines drawn shoreline to shoreline, to the south along latitude 38°16'43" N and to the west along longitude 076°38'30" W.

This proposed rule provides additional information about areas within the regulated area, and the restrictions that would apply to mariners. These areas include a "Race area", "Buffer area", "Milling area" and "Spectator area". They lie within an area bounded to the south by a line drawn along latitude 38°16'43" N and bounded to the west by a line drawn along longitude 076°38'30" W, located in Breton Bay and McIntosh Run, at Leonardtown, MD.

The proposed duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event, scheduled from 9:30 a.m. until 4 p.m. on July 31, 2021, and from 10:15 a.m. until 4 p.m. on August 1, 2021. The COTP and the Coast Guard Event Patrol Commander (PATCOM) would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Southern Maryland Boat Club Regatta participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators can request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16.

Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels would direct everyone other than participants while within the regulated area. Spectators are only allowed inside the regulated area if they remain within a designated spectator area. Only participants and official patrols are allowed within the race area and milling area.

The regulatory text we are proposing appears at the end of this document.

### IV. Regulatory Analyses

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

#### A. Regulatory Planning and Review

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

This regulatory action determination is based on size, duration and time of year of the regulated area, which would impact a small designated area of Breton Bay and McIntosh Run for 22 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule would allow vessels and persons to seek permission to enter the regulated area, and vessel traffic able to do so safely would be able to transit the regulated

area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area.

#### B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

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

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

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

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for eight hours. Normally such actions are categorically excluded from further

review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

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

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T05–0214 to read as follows:

#### § 100.T05–0214 Southern Maryland Boat Club Leonardtown Regatta, Breton Bay, McIntosh Run, Leonardtown, MD.

(a) *Locations.* All coordinates reference Datum NAD 1983.

(1) *Regulated area.* All navigable waters of Breton Bay and McIntosh Run, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16'43" N and bounded to the west by a line drawn along longitude 076°38'30" W, located at Leonardtown, MD. The locations in paragraphs (a)(2) through (5) of this section are within the regulated area.

(2) *Race area.* The area is bounded by a line commencing at position latitude 38°17'09.78" N, longitude 076°38'22.71" W; thence southeasterly to latitude 38°16'58.62" N, longitude 076°37'50.91" W; thence southwesterly to latitude 38°16'51.89" N, longitude 076°37'55.82" W; thence northwesterly to latitude 38°17'05.44" N, longitude 076°38'27.20" W; thence northeasterly terminating at point of origin.

(3) *Buffer area.* The area surrounds the entire race area described in paragraph (a)(2) of this section. The area is bounded by a line commencing at the shoreline west of Leonardtown Wharf Park at position latitude 38°17'13.80" N, longitude 076°38'24.72" W; thence easterly to latitude 38°16'58.61" N, longitude 076°37'44.29" W; thence southerly to latitude 38°16'46.35" N, longitude 076°37'52.54" W; thence westerly to latitude 38°16'58.78" N, longitude 076°38'26.63" W; thence northerly to latitude 38°17'07.50" N, longitude 076°38'30.00" W; thence northeasterly terminating at point of origin.

(4) *Milling area.* The area is bounded by a line commencing at the shoreline east of Leonardtown Wharf Park at position latitude 38°17'10.07" N, longitude 076°38'14.87" W; thence

easterly and southerly along the shoreline to latitude 38°17'01.54" N, longitude 076°37'52.24" W; thence westerly terminating at point of origin.

(5) *Spectator area*—(i) *Northeast spectator fleet area*. The area is bounded by a line commencing at position latitude 38°16'59.10" N, longitude 076°37'45.60" W, thence northeasterly to latitude 38°17'01.76" N, longitude 076°37'43.71" W, thence southeasterly to latitude 38°16'59.23" N, longitude 076°37'37.25" W, thence southwesterly to latitude 38°16'53.32" N, longitude 076°37'40.85" W, thence northwesterly to latitude 38°16'55.48" N, longitude 076°37'46.39" W, thence northeasterly to latitude 38°16'58.61" N, longitude 076°37'44.29" W, thence northwesterly to point of origin.

(ii) *Southeast spectator fleet area*. The area is bounded by a line commencing at position latitude 38°16'47.20" N, longitude 076°37'54.80" W, thence southerly to latitude 38°16'43.30" N, longitude 076°37'55.20" W, thence easterly to latitude 38°16'43.20" N, longitude 076°37'47.80" W, thence northerly to latitude 38°16'44.80" N, longitude 076°37'48.20" W, thence northwesterly to point of origin.

(iii) *South spectator fleet area*. The area is bounded by a line commencing at position latitude 38°16'55.36" N, longitude 076°38'17.26" W, thence southeasterly to latitude 38°16'50.39" N, longitude 076°38'03.69" W, thence southerly to latitude 38°16'48.87" N, longitude 076°38'03.68" W, thence northwesterly to latitude 38°16'53.82" N, longitude 076°38'17.28" W, thence northerly to point of origin.

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

*Buffer area* is a neutral area that surrounds the perimeter of the race area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or race boats and spectator vessels or nearby transiting vessels. This area provides separation between a race area and specified spectator areas or other vessels that are operating in the vicinity of the regulated area established by the special local regulations in this section.

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Event Patrol Commander* or *Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated

by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Milling area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a milling area within the regulated area defined by this section. The area is used before a demonstration start to warm up the boats engines.

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

*Participant* means a person or vessel registered with the event sponsor as participating in the Southern Maryland Boat Club Leonardtown Regatta or otherwise designated by the event sponsor as having a function tied to the event.

*Race area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a high-speed power boat demonstration area within the regulated area defined by this section.

*Spectator* means a person or vessel not registered with the event sponsor as participants or assigned as official patrols and is present with the purpose of observing the event.

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

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

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

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this

regulated area, can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake.

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

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

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

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

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

(e) *Enforcement period*. This section will be enforced from 7 a.m. to 6 p.m. on July 31, 2021, and from 7 a.m. to 6 p.m. on August 1, 2021.

Dated: June 4, 2021.

**David E. O'Connell,**

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

[FR Doc. 2021-12168 Filed 6-9-21; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2021-0250; FRL-10024-67-Region 1]

### Air Plan Approval; Maine and New Hampshire; 2015 Ozone NAAQS Interstate Transport Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. The States of Maine and New Hampshire each made submissions to the Environmental Protection Agency (EPA) to address these requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). EPA is proposing to approve the submissions for each state as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

**DATES:** Written comments must be received on or before July 12, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2021–0250 at <https://www.regulations.gov>, or via email to [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are

Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

**FOR FURTHER INFORMATION CONTACT:** Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1684, email [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

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- I. Background
- II. Maine Submission
- III. New Hampshire Submission
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**I. Background**

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).<sup>1</sup> Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).<sup>2</sup> One of these applicable requirements is found in section 110(a)(2)(D)(i)(I), otherwise known as the good neighbor provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are four so-called “prongs” within CAA section 110(a)(2)(D)(i); section 110(a)(2)(D)(i)(I) contains prongs 1 and 2. Under prongs 1 and 2 of the good neighbor provision, a SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). EPA and states must give

<sup>1</sup> National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

<sup>2</sup> SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).<sup>3</sup>

We note that EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards,<sup>4</sup> the Cross-State Air Pollution Rule Update (CSAPR Update), and, most recently, the Revised CSAPR Update for the 2008 ozone NAAQS.<sup>5,6</sup>

Through the development and implementation of CSAPR and other regional rulemakings pursuant to the good neighbor provision,<sup>7</sup> EPA, working in partnership with states, developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS: (1) Identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered “linked” and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), considering air-quality and cost factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

EPA has released several documents containing information relevant to evaluating interstate transport with

<sup>3</sup> See *North Carolina v. EPA*, 531 F.3d 896, 909–911 (2008).

<sup>4</sup> See 76 FR 48208 (August 8, 2011).

<sup>5</sup> *Wisconsin v. EPA* remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin v. EPA*, 938 F.3d 303, 313 (D.C. Cir. 2019).

<sup>6</sup> The Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (86 FR 23054 (April 30, 2021)) was signed by the EPA Administrator on March 15, 2021, and responded to the remand of the CSAPR Update (81 FR 74504 (October 26, 2016)) and the vacatur of a separate rule, the CSAPR Close-Out (83 FR 65878 (December 21, 2018)) by the D.C. Circuit. *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019); *New York v. EPA*, 781 F. App'x. 4 (D.C. Cir. 2019).

<sup>7</sup> In addition to the CSAPR rulemakings, other regional rulemakings addressing ozone transport include the NO<sub>x</sub> SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

respect to the 2015 ozone NAAQS. First, on January 6, 2017, EPA published a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values (DVs) for 2023 using a 2011 base year platform, on which we requested public comment.<sup>8</sup> In the NODA, EPA used the year 2023 as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 ozone NAAQS.<sup>9</sup> On October 27, 2017, we released a memorandum (2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and noted that the modeling may be useful for states developing SIPs to address good neighbor obligations for the 2008 ozone NAAQS.<sup>10</sup> On March 27, 2018, we issued a memorandum (March 2018 memorandum) noting that the same 2023 modeling data released in the 2017 memorandum could also be useful for identifying potential downwind air quality problems with respect to the 2015 ozone NAAQS at step 1 of the four-step interstate transport framework. The March 2018 memorandum also included the then newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems for the 2015 ozone NAAQS under step 2 of the interstate transport framework. EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing good neighbor SIP submissions for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 of the framework, and considerations for identifying downwind areas that may have problems maintaining the standard at step 1 of the framework.<sup>11</sup>

<sup>8</sup> See Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

<sup>9</sup> 82 FR 1733, 1735 (January 6, 2017).

<sup>10</sup> See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices>.

<sup>11</sup> See Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 ("August 2018 memorandum"), and Considerations for Identifying Maintenance Receptors for Use in Clean

On October 30, 2020, in the Notice of Proposed Rulemaking for the Revised CSAPR Update, EPA released and accepted public comment on updated 2023 modeling that used a 2016 emissions platform developed under EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project as the primary source for the base year and future year emissions data.<sup>12</sup> On March 15, 2021, EPA signed the final Revised CSAPR Update using the same modeling released at proposal.<sup>13</sup> Although Maine and New Hampshire relied on the modeling included in the March 2018 memo to develop their SIP submissions as EPA had suggested, EPA now proposes to primarily rely on the updated and newly available 2016 base year modeling in evaluating these submissions. By using the updated modeling results, EPA is using the most current and technically appropriate information as the primary basis for this proposed rulemaking. EPA's independent analysis, which also evaluated historical monitoring data, recent DVs, and emissions trends, found that such information provides additional support and further substantiates the results of the 2016 base year modeling as the basis for this proposed rulemaking. Section III of this notice and the Air Quality Modeling technical support document (TSD) included in the docket for this proposal contain additional detail on this modeling.<sup>14</sup>

In the CSAPR, CSAPR Update, and the Revised CSAPR Update, EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was "linked" at step 2 of the interstate transport framework and would, therefore, contribute to

Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in the docket for this action or at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>.

<sup>12</sup> See 85 FR 68964, 68981. The results of this modeling are included in a spreadsheet in the docket for this action. The underlying modeling files are available for public review in the docket for the Revised CSAPR Update (EPA-HQ-OAR-2020-0272).

<sup>13</sup> See 86 FR 23054 at 23075, 23164 (April 30, 2021).

<sup>14</sup> See "Air Quality Modeling Technical Support Document for the Revised Cross-State Air Pollution Rule Update," 86 FR 23054 (April 30, 2021), available in the docket for this action. This TSD was originally developed to support EPA's action in the Revised CSAPR Update, as relating to outstanding good neighbor obligations under the 2008 ozone NAAQS. While developed in this separate context, the data and modeling outputs, including interpolated design values for 2021, may be evaluated with respect to the 2015 ozone NAAQS and used in support of this proposal.

downwind nonattainment and maintenance sites identified in step 1. If a state's impact did not equal or exceed the one percent threshold, the upwind state was not "linked" to a downwind air quality problem, and EPA, therefore, concluded the state would not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's impact equaled or exceeded the one percent threshold, the state's emissions were further evaluated in step 3, considering both air quality and cost considerations, to determine what, if any, emissions might be deemed "significant" and, thus, must be eliminated under the good neighbor provision. EPA is proposing to rely on the one percent threshold for the purpose of evaluating Maine and New Hampshire's contributions to nonattainment or maintenance of the 2015 ozone NAAQS in downwind areas.

Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air-quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin v. EPA*, remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). 938 F.3d 303, 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland v. EPA* that cited the *Wisconsin* decision in holding that EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for EPA's denial of a petition under CAA section 126(b). *Maryland v. EPA*, 958 F.3d 1185, 1203–04 (D.C. Cir. 2020). The court noted that "section 126(b) incorporates the Good Neighbor Provision," and, therefore, "EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the next downwind attainment deadline. Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date." *Id.* at 1204 (emphasis added). EPA interprets the court's holding in *Maryland* as requiring the Agency, under the good neighbor provision, to assess downwind air quality by the next applicable attainment date, including a Marginal area attainment date under CAA section

181 for ozone nonattainment.<sup>15</sup> The Marginal area attainment date for the 2015 ozone NAAQS is August 3, 2021.<sup>16</sup> Historically, EPA has considered the full ozone season prior to the attainment as supplying an appropriate analytic year for assessing good neighbor obligations. While this would be 2020 for an August 2021 attainment date (which falls within the 2021 ozone season running from May 1 to September 30), in this circumstance, when the 2020 ozone season is wholly in the past, it is appropriate to focus on 2021 to address good neighbor obligations to the extent possible by the 2021 attainment date. EPA does not believe it would be appropriate to select an analytical year that is wholly in the past, because the agency interprets the good neighbor provision as forward looking. See 86 FR 23054 at 23074; see also *Wisconsin*, 938 F.3d at 322. Consequently, in this proposal EPA will use the analytical year of 2021 to evaluate Maine and New Hampshire's good neighbor obligations with respect to the 2015 ozone NAAQS.

## II. Maine Submission

On February 6, 2020, Maine submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS.

Maine relied on the results of EPA's modeling for the 2015 ozone NAAQS contained in the March 2018 memorandum to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Maine in the year 2023. These results indicate Maine's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.01 ppb in Suffolk County, New York (monitoring site 361030002). Maine compared this value to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS. Because Maine's impacts to receptors in downwind states are projected to be less

<sup>15</sup> We note that the court in *Maryland* did not have occasion to evaluate circumstances in which EPA may determine that an upwind linkage to a downwind air quality problem exists at steps 1 and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. See *Wisconsin*, 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the good neighbor provision. Such circumstances are not at issue in the present proposal.

<sup>16</sup> CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective Aug. 3, 2018).

than 0.70 ppb in 2023, Maine concluded that emissions from sources within the state will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

## III. New Hampshire Submission

On September 5, 2018, New Hampshire submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. This "good neighbor SIP" was included as an enclosure in the state's infrastructure SIP for the same NAAQS.

New Hampshire relied on the results of EPA's modeling for the 2015 ozone NAAQS contained in the March 2018 memorandum to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in New Hampshire in the year 2023. These results indicate New Hampshire's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.06 ppb in Queens County, New York (monitoring site 360810124). New Hampshire compared this value to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS. Because New Hampshire's impacts to receptors in downwind states are projected to be less than 0.70 ppb in 2023,<sup>17</sup> New Hampshire concluded that emissions from sources within the state will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

New Hampshire's September 2018 good neighbor SIP submission also lists New Hampshire's regulations for controlling emissions of ozone precursors as well as its regional emissions-control strategies. These include Env-A 619, Prevention of Significant Deterioration (PSD), and Env-A 618, Nonattainment New Source Review (NNSR) (82 FR 24057; May 25, 2017); and Env-A 2300, Mitigation of Regional Haze (77 FR 50602; August 22, 2012).

## IV. EPA Evaluation of the States' Submittals

Maine and New Hampshire's SIP submissions both rely on analysis of the

<sup>17</sup> New Hampshire incorrectly stated in its September 2018 good neighbor SIP submission that the state's highest projected contribution for 2023 to any downwind nonattainment or maintenance receptor is 6 ppb; the modeled value should be 0.06 ppb as correctly shown in Table 1 of the submission. New Hampshire also incorrectly stated in their submission that 7 ppb, rather than 0.70 ppb, is 1% of the NAAQS.

year 2023 to show that each state does not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. However, given the holdings in *Wisconsin* and *Maryland*, analysis of that year is no longer sufficient where the next attainment date for the 2015 ozone NAAQS is in 2021.<sup>18</sup> Nonetheless, the analysis EPA conducted for the 2021 analytical year corroborates the conclusion reached in each state's submission.

As stated in Section I of this notice, in consideration of the holdings in *Wisconsin* and *Maryland*, EPA's analysis relies on 2021 as the relevant attainment year for evaluating a State's good neighbor obligations with respect to the 2015 ozone NAAQS using the four-step interstate transport framework. In step 1, we identify locations where the Agency expects there to be nonattainment or maintenance receptors for the 2015 8-hour ozone NAAQS in the 2021 analytic future year. Where EPA's analysis shows that an area or site does not fall under the definition of a nonattainment or maintenance receptor in 2021, that site is excluded from further analysis under EPA's four step interstate transport framework.<sup>19</sup> For areas that are identified as a nonattainment or maintenance receptor in 2021, we proceed to the next step of our four-step framework by identifying the upwind state's contribution to those receptors.

EPA's approach to identifying ozone nonattainment and maintenance receptors in this action is consistent with the approach used in previous transport rulemakings. EPA's approach gives independent consideration to both the "contribute significantly to nonattainment" and the "interfere with maintenance" prongs of section 110(a)(2)(D)(i)(I), consistent with the

<sup>18</sup> We recognize that Maine, New Hampshire, and other states may have been influenced by EPA's 2018 guidance memos (issued prior to the *Wisconsin* and *Maryland* decisions) in making good neighbor submissions that relied on EPA's modeling of 2023. When there are intervening changes in relevant law or legal interpretation of CAA requirements, states are generally free to withdraw, supplement, and/or re-submit their SIP submissions with new analysis (in compliance with CAA procedures for SIP submissions). While neither Maine nor New Hampshire has done this, as explained in this section, the independent analysis EPA has conducted at its discretion confirms that the states' submissions in this instance are ultimately approvable.

<sup>19</sup> While EPA has focused its analysis in this notice on the year 2021, modeling data in the record for years 2023 and 2028 confirm that no new linkages to downwind receptors are projected for these states in later years. This is not surprising as it is consistent with an overall, long-term downward trend in emissions from these states.



D.C. Circuit's direction in *North Carolina*.<sup>20</sup>

For the purpose of this proposal, EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as CSAPR Update, where EPA defined nonattainment receptors as those areas that both currently monitor nonattainment and that EPA projects will be in nonattainment in the future analytic year.<sup>21</sup>

In addition, in this proposal, EPA identifies a receptor to be a "maintenance" receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 136 (D.C. Cir. 2015).<sup>22</sup> Specifically, monitoring sites with a projected maximum design value in 2021 that exceeds the NAAQS are considered maintenance receptors. EPA's method of defining these receptors takes into account both measured data and reasonable projections based on modeling analysis.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, EPA often uses the term "maintenance-only" to refer to receptors that are not also nonattainment receptors. Consistent with the methodology described above, monitoring sites with a projected maximum design value that exceeds the NAAQS, but with a projected average design value that is below the NAAQS, are identified as maintenance-only receptors. In addition, those sites that are currently measuring ozone concentrations below the level of the applicable NAAQS, but are projected to be nonattainment based on the average design value and that, by definition, are projected to have a maximum design value above the standard are also identified as maintenance-only receptors.

<sup>20</sup> 531 F.3d at 910–911 (holding that EPA must give "independent significance" to each prong of CAA section 110(a)(2)(D)(i)(I)).

<sup>21</sup> See 81 FR 74504 (October 26, 2016). Revised CSAPR Update also used this approach. See 86 FR 23054 (April 30, 2021). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. See 70 FR 25241 (January 14, 2005). See also *North Carolina*, 531 F.3d at 913–914 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

<sup>22</sup> See 76 FR 48208 (August 8, 2011), CSAPR Update and Revised CSAPR Update also used this approach. See 81 FR 74504 (October 26, 2016) and See 86 FR 23054 (April 30, 2021).

To evaluate future air quality in steps 1 and 2 of the interstate transport framework, EPA is using the 2016 and 2023 base case emissions developed under EPA/MJO/state collaborative emissions modeling platform project as the primary source for base year and 2023 future year emissions data for this proposal.<sup>23</sup> Because this platform does not include emissions for 2021, EPA developed an interpolation technique based on modeling for 2023 and measured ozone data to determine ozone concentrations for 2021. To estimate average and maximum design values for 2021, EPA first performed air quality modeling for 2016 and 2023 to obtain design values in 2023. The 2023 design values were then coupled with the corresponding 2016 measured design values to estimate design values in 2021. Details on the modeling, including the interpolation methodology, can be found in the Air Quality Modeling TSD, found in the docket of this proposal.

To quantify the contribution of emissions from specific upwind states on 2021 8-hour design values for the identified downwind nonattainment and maintenance receptors, EPA first performed nationwide, state-level ozone source apportionment modeling for 2023. The source apportionment modeling provided contributions to ozone from precursor emissions of anthropogenic nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) in each state, individually. The modeled contributions were then applied in a relative sense to the 2021 average design value to estimate the contributions in 2021 from each state to each receptor. Details on the source apportionment modeling and the methods for determining contributions in 2021 are in the Air Quality Modeling TSD in the docket.

The 2021 design values and contributions were examined to determine if Maine and New Hampshire, considered separately, contribute at or above the threshold of one percent of the 2015 ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. The data<sup>24</sup> indicate that the highest contribution in 2021 from Maine to a

<sup>23</sup> See 86 FR 23054 (April 30, 2021). The results of this modeling are included in a spreadsheet in the docket for this action. The underlying modeling files are available for public access in the docket for the Revised CSAPR Update (EPA-HQ-OAR-2020-0272).

<sup>24</sup> The data are given in the "Air Quality Modeling Technical Support Document for the Revised Cross-State Air Pollution Rule Update" and "Ozone Design Values and Contributions Revised CSAPR Update.xlsx," which are included in the docket for this action.

downwind nonattainment or maintenance receptor is 0.01 ppb to a maintenance receptor in Fairfield County, Connecticut (monitoring site 90013007), and, from New Hampshire, is 0.10 ppb to the same downwind receptor. The data also show modeled ozone contributions from Maine and New Hampshire to the design values of a larger set of monitoring sites (independent of attainment status) and indicate that the highest projected contribution in 2021 from Maine to any of these sites is 0.12 ppb to monitors in Putnam and Westchester Counties in New York (monitoring sites 360790005 and 361192004; #307 and #314 on the Design Values and Contributions spreadsheet), and, from New Hampshire, is 1.46 ppb to the monitor in Knox County, Maine (monitoring site 230130004; #226 on the Design Values and Contributions spreadsheet). While New Hampshire's modeled contribution to the Knox County monitor exceeds one percent of the 2015 ozone NAAQS, EPA's analysis at step 1 does not identify the Knox County monitor as a downwind area that may have problems maintaining the 2015 ozone NAAQS. The Knox County monitor's projected design value in 2021 is 57.4 ppb.

EPA also analyzed emissions trends for ozone precursors in Maine and New Hampshire to support the findings from the air quality analysis. In evaluating emissions trends, we first reviewed the information submitted by each state and then reviewed additional information available to the Agency. We focused on state-wide emissions of nitrogen oxides and volatile organic compounds.<sup>25 26</sup> Emissions from mobile sources, electric generating units ("EGUs"), industrial facilities, gasoline vapors, and chemical solvents are some of the major anthropogenic sources of ozone precursors. This evaluation looks at both past emissions trends, as well as projected trends.

As shown in Table 1, for Maine, between 2016 and 2023, annual total NO<sub>x</sub> and VOC emissions are projected to decline by 38 percent and 20 percent, respectively. For New Hampshire, between 2016 and 2023, annual total NO<sub>x</sub> and VOC emissions are projected to decline by 36 percent and 15 percent, respectively. The projected reductions are a result of the implementation of existing control programs that will continue to decrease NO<sub>x</sub> and VOC emissions in Maine and New

<sup>25</sup> This is because ground-level ozone is not emitted directly into the air but is formed by chemical reactions between ozone precursors, chiefly NO<sub>x</sub> and non-methane VOCs, in the presence of sunlight.

<sup>26</sup> 81 FR 74504, 74513–14.



Hampshire, as indicated by EPA’s most recent 2021 and 2023 projected emissions.

As shown in Table 2, onroad and nonroad mobile source emissions collectively comprise a large portion of each state’s total anthropogenic NO<sub>x</sub> and VOC. For example, in 2019, NO<sub>x</sub> emissions from mobile sources in Maine comprised 52 percent of total NO<sub>x</sub> emissions and 48 percent of total VOC emissions. In New Hampshire for that same year, NO<sub>x</sub> emissions from mobile sources comprised 54 percent of total NO<sub>x</sub> emissions and 45 percent of total VOC emissions.

The large decrease in NO<sub>x</sub> emissions between 2016 emissions and projected 2023 emissions in each state is

primarily driven by reductions in emissions from onroad and nonroad mobile sources. EPA projects that both VOC and NO<sub>x</sub> emissions will continue declining out to 2023 as newer vehicles and engines that are subject to the most recent, stringent mobile source standards replace older vehicles and engines.<sup>27</sup>

In summary, there is no evidence to suggest that the overall emissions trend demonstrated in Table 1 in either state will suddenly reverse or spike in 2021 compared to historical emissions levels or those projected for 2023. Further, there is no evidence that the projected ozone precursor emissions trends out to 2023 and beyond would not continue to show a decline in emissions. In

addition, EPA’s normal practice is to include in our modeling only changes in NO<sub>x</sub> or VOC emissions that result from final regulatory actions. Any potential changes in NO<sub>x</sub> or VOC emissions that may result from possible future or proposed regulatory actions are speculative.

This downward trend in emissions in Maine and New Hampshire adds support to the air quality analyses presented above for each state, and indicates that the contributions from emissions from sources in Maine and New Hampshire to ozone receptors in downwind states will continue to decline and, for each state, remain below one percent of the NAAQS.

TABLE 1—ANNUAL EMISSIONS OF NO<sub>x</sub> AND VOC FROM ANTHROPOGENIC SOURCES IN MAINE AND NEW HAMPSHIRE [Tons per year]<sup>28</sup>

	2011	2012	2013	2014	2015	2016	2017	2018	2019	Projected 2021	Projected 2023
ME NO <sub>x</sub> .....	59,773	57,292	54,812	52,332	51,871	49,148	49,889	48,440	46,542	33,996	30,536
ME VOC .....	64,079	61,860	59,641	57,422	54,686	49,630	48,284	47,024	45,665	41,197	39,562
NH NO <sub>x</sub> .....	36,554	37,065	37,577	38,086	35,025	30,775	28,530	27,408	25,680	21,822	19,579
NH VOC .....	45,859	44,159	42,459	40,731	38,275	34,234	33,026	31,928	31,193	29,640	28,872

TABLE 2—ANNUAL EMISSIONS OF NO<sub>x</sub> AND VOC FROM ONROAD AND NONROAD VEHICLES IN MAINE AND NEW HAMPSHIRE [Tons per year]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	Projected 2021	Projected 2023
ME .....											
NO <sub>x</sub> .....	41,601	38,861	36,122	33,382	31,465	27,286	26,570	25,714	24,005	17,841	16,214
ME VOC .....	40,376	38,091	35,805	33,519	30,884	25,929	24,683	23,423	22,064	18,037	16,499
NH NO <sub>x</sub> .....	26,038	24,979	23,921	22,862	20,835	17,619	16,408	15,022	13,970	10,776	9,878
NH VOC .....	25,314	24,184	23,054	21,924	20,027	16,544	15,895	14,796	14,062	11,947	11,277

Thus, EPA’s air quality and emissions analyses indicate that emissions from Maine or from New Hampshire, with each state considered individually, will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state in 2021.

**V. Proposed Action**

As discussed in Sections II and III, Maine and New Hampshire have each concluded that emissions from sources in their individual state will not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. Each state submission reached this conclusion by

relying on information for the analytic year 2023. As discussed above, the *Wisconsin* and *Maryland* decisions of the D.C. Circuit have made clear that the good neighbor analysis for the 2015 ozone NAAQS must focus on the next attainment date, and that date is the Marginal area attainment date in 2021. Therefore, EPA conducted additional analysis to determine whether each state’s conclusions would remain valid in 2021 rather than 2023. EPA’s evaluation of measured and monitored data, including interpolating values to generate a reasonable expectation of air quality and contribution values in 2021, as discussed in Section IV, is consistent with conclusions made by Maine and

New Hampshire that, with each state considered separately, emissions from sources in each state will not contribute to nonattainment or interference with maintenance of the 2015 ozone NAAQS in any other state. Because our analysis corroborates each state’s conclusion that emissions from within its state do not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in another state, we propose to approve the Maine and New Hampshire submissions as meeting CAA section 110(a)(2)(D)(i)(I).

EPA is soliciting public comments on this notice. These comments will be considered before taking final action. Interested parties may participate in the

<sup>27</sup> Tier 3 Motor Vehicle Emission and Fuel Standards (79 FR 23414, April 28, 2014); Mobile Source Air Toxics Rule (MSAT2) (72 FR 8428, February 26, 2007), Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002, January 18, 2001); Clean Air Nonroad Diesel Rule (69 FR 38957, June 29, 2004); Locomotive and Marine Rule (73 FR 25098, May 6, 2008); Marine Spark-Ignition and Small

Spark-Ignition Engine Rule (73 FR 59034, October 8, 2008); New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder Rule (75 FR 22895, April 30, 2010); and Aircraft and Aircraft Engine Emissions Standards (77 FR 36342, June 18, 2012).

<sup>28</sup> The annual emissions data for the years 2011 through 2019 were obtained from EPA’s National Emissions Inventory website: <https://www.epa.gov/>

*air-emissions-inventories/air-pollutant-emissions-trends-data*. Note that emissions from miscellaneous sources are not included in the state totals. The emissions for 2021 and 2023 are based on the 2016 emissions modeling platform. See “2005 thru 2019 + 2021\_2023\_2028 Annual State Tier1 Emissions” and the Emissions Modeling TSD in the docket for this action.

Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

## VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 3, 2021.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

[FR Doc. 2021-12079 Filed 6-9-21; 8:45 am]

**BILLING CODE 6560-50-P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 87, and 90

[ET Docket No. 13-115; RM 11341; FCC 21-44; FR ID 27947]

### Allocation of Spectrum for Non-Federal Space Launch Operations

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) takes steps towards establishing a spectrum allocation and licensing framework that will provide regulatory certainty and improved efficiency and that will promote innovation and investment in the United States commercial space launch industry. In the Further Notice of Proposed Rulemaking, the Commission seeks comment on the definition of space launch operations, the potential allocation of spectrum for the commercial space launch industry, including the 420-430 MHz, 2025-2110 MHz, and 5650-5925 MHz bands. In addition, the Commission seeks comment on establishing service rules, including licensing and technical rules and coordination procedures, for the use of spectrum for commercial space launch operations. Finally, the Commission seeks to refresh the record on potential ways to facilitate Federal

use of commercial satellite services in what are currently non-Federal satellite bands and enable more robust federal use of the 399.9-400.05 MHz band.

**DATES:** Comments are due on or before July 12, 2021; reply comments are due on or before August 9, 2021.

**ADDRESSES:** You may submit comments, identified by ET Docket No. 13-115, by any of the following methods:

- *Federal Communications Commission's Website:* <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

### FOR FURTHER INFORMATION CONTACT:

Nicholas Oros, Office of Engineering and Technology, at (202) 418-0636 or [Nicholas.Oros@fcc.gov](mailto:Nicholas.Oros@fcc.gov); Peter Trachtenberg, Wireless Telecommunications Bureau, at [Peter.Trachtenberg@fcc.gov](mailto:Peter.Trachtenberg@fcc.gov) or 202-418-7369; or Kimberly Baum, International Bureau, at [Kimberly.Baum@fcc.gov](mailto:Kimberly.Baum@fcc.gov) or 202-418-2752. For information regarding the PRA information collection requirements contained in this PRA, contact Cathy Williams, Office of Managing Director, at (202) 418-2918 or [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order and Further Notice of Proposed Rulemaking (FNPRM)*, ET Docket No. 13-115, FCC 21-44, adopted and released on April 22, 2020. This document is available by downloading the text from the Commission's website at <https://www.fcc.gov/document/fcc-seeks-make-spectrum-available-commercial-space-launches-0>. When the FCC Headquarters reopens to the public, the full text of this document also will be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format) by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## Synopsis

1. In this *FNPRM*, the Commission continue its efforts to support commercial space launch operations and federal use of commercial space services. Specifically, the Commission proposes to add a non-Federal allocation in the 2025–2110 MHz band to support such operations, and the Commission seeks further comment on adding non-Federal allocations for commercial space launch operations in the 420–430 MHz, 2200–2290 MHz, and 5650–5925 MHz bands. The Commission further proposes to adopt a licensing framework and a set of technical rules to govern space launch operations services in the 2200–2290 MHz band, as well as the other three bands if they are ultimately allocated for commercial space launch purposes. In addition, the Commission seeks comment on whether to amend any of the rules applicable to space launch operations in the 2360–2395 MHz bands. The Commission seeks comment on various licensing frameworks to authorize a variety of telemetry, tracking, and command operations between launch vehicles and ground stations during the initial launch and reentry phases of space launch operations. The Commission also seeks comment on whether there are additional measures that should be considered in order to facilitate radio-frequency licensing of certain other types of space launch operations that may be currently addressed through experimental licensing, including communications between launch vehicles and satellites and communications in connection with certain payload activities. Finally, the Commission seeks to refresh the record on the matter of expanding Federal use of certain non-Federal FSS and MSS bands, including removing the footnote restriction on federal earth stations accessing federal space stations operating in the 399.9–400.05 MHz band.

2. In a 2013 *Notice of Proposed Rulemaking and Notice of Inquiry (NPRM)*, the Commission proposed to provide a primary allocation of spectrum in three bands for non-Federal use during space launches: 420–430 MHz, 2200–2290 MHz, and 5650–5925 MHz. The *NPRM* also proposed to add either a Federal Fixed Satellite Service (FSS) or Mobile Satellite Service (MSS) allocation or a footnote to allow Federal access to several frequency bands for satellite services that currently only support commercial satellite systems. The *NPRM* also addressed a 2012 NTIA request to change a footnote in the U.S.

Table to enable Federal space stations to operate in the 399.9–400.05 MHz MSS band.

3. *420–430 MHz Band.* The 420–430 MHz band is used during launches from Federal launch sites to transmit a flight termination signal to a launch vehicle, if necessary. This signal will cause the launch vehicle to self-destruct if it goes off course and poses a danger to a populated area. The *NPRM* sought comment on whether the Commission should make a co-primary non-Federal Aeronautical Mobile allocation for the 420–430 MHz band and whether it should add a footnote to the U.S. Table restricting use of the allocation to self-destruct signals (*i.e.*, flight termination signals) during launches. The Commission has not received any STA requests for this band during space launches. This band is heavily used by Federal users, including the Department of Defense (DoD), for radiolocation applications.

4. The Commercial Spaceflight Federation notes that there has not been a need for this band by commercial companies because launches have occurred at government facilities which transmit the flight termination signals. However, the Commercial Spaceflight Federation claims that, as launches increasingly occur at private spaceports, operators will need licenses for this band. The New Mexico Spaceport Authority agrees that commercial operators will want to operate their own flight safety systems. SpaceX may need access to the band in the future. Orbital ATK endorses adding a co-primary non-Federal allocation for 421 MHz rather than adding the allocation for the entire band. Blue Origin takes no position on use of this band and indicates that it does not use this band during launches.

5. The Commission seeks further comment on whether to adopt a footnote to the U.S. Table which adds a primary non-Federal Aeronautical Mobile allocation to the 420–430 MHz band, requires coordination of assignments with NTIA, and restricts use of the band to pre-launch testing of launch vehicles and sending flight termination signals to launch vehicles during launches. Because launches to date have occurred at Federal ranges, access to this band by commercial launch providers has not been necessary. The Commission expects this may change as companies transition towards using commercial launch sites in the future. Thus, adding this Aeronautical Mobile allocation may be critical for protecting the public during space launches. Because the intended use of this band is for safety-of-life applications, the Commission proposes to add the Aeronautical

Mobile allocation on a primary basis so that its use will be on an interference-protected basis. Further, the Commission proposes to add this Aeronautical Mobile allocation for the entire 420–430 MHz band, rather than limit it to just 421 MHz as suggested by Orbital ATK, because the Commission cannot predict what frequencies will be available at the future at launch sites. As NTIA permits range safety operations (*i.e.*, flight termination systems) across 420–450 MHz, should the Commission expand the Aeronautical Mobile allocation to 420–450 MHz? Regardless of the frequency range of the allocation, use of the band would need to be coordinated with NTIA. In this *FNPRM*, the Commission also proposes licensing and service rules for use of this band, should the Commission adopt this proposed allocation.

6. While the U.S. Table does not have a Mobile allocation in the 420–430 MHz band, the International Table has a Mobile, except aeronautical mobile allocation, for all regions. Therefore, aeronautical mobile use of the 420–430 MHz band is contrary to the International Table. Consequently, other countries may permit radio services in the band that are not compatible with aeronautical mobile use of this band. If the Commission adopts an Aeronautical Mobile allocation for this band, does it need to place restrictions on use of the allocation to prevent harmful interference occurring to radio services in other countries? Such restrictions could include prohibition of operations near international borders, power limitations, or use of directional antennas to direct transmission away from international borders.

7. *2025–2110 MHz Band.* The *NPRM* addressed three frequency bands commonly used by commercial space launch entities at that time. However, since the *NPRM* was adopted in 2013, the commercial space launch industry has also begun to use the 2025–2110 MHz band to transmit control signals to launch vehicles. The Commission has granted access to this band during space launches using STAs issued under its Part 5 experimental licensing rules. The Commission expects that use of this band by the commercial space launch industry will continue to grow in the future and that establishing a permanent allocation for these services will provide more reliable access to this band than the STA process. The Commission therefore proposes to amend the Allocation Table by adding a co-primary non-Federal space operation (Earth-to-space) allocation to the 2025–2110 MHz band.

8. The 2025–2110 MHz band is currently allocated for both Federal and non-Federal fixed and mobile use. The largest non-Federal use of the band is for the Broadcast Auxiliary Service (BAS) operating under Part 74 of the Commission's rules. BAS stations make it possible for television and radio stations to transmit program material from the site of a breaking news story or a major event to the studio for inclusion in a broadcast program. BAS stations are also used to transmit programming material from a studio to the broadcasting transmitter or between television broadcast stations. BAS shares the 2025–2110 MHz band with the Cable Television Relay Service (CARS) and the Local Television Transmission Service (LTTS), which "have technically and operationally similar stations[.]" The Commission's rules encourage BAS, CARS, and LTTS users of this band to consult with local coordination committees in selecting their frequencies to avoid causing harmful interference with each other's operations.

9. Since 2000, the 2025–2110 MHz band has been allocated for Federal space operation, space research, and earth exploration satellite services. While these Federal allocations are co-primary, these uses in general are not allowed to constrain BAS, CARS, and LTTS deployment and must be coordinated with these non-Federal operations. Federal use of these allocations continues to increase as Federal users seek to increase resiliency and deploy large constellations of smaller satellites. To date, sharing of this band between Federal operations and BAS, CARS, and LTTS users has been successful.

10. Federal primary fixed and mobile service allocations were added to the 2025–2110 MHz band in 2014. Footnote US92 restricts Federal use of the band to the military services and places specific requirements upon federal systems to facilitate sharing of the band with incumbent Federal and non-Federal services. The military services' transition plans include the relocation of certain terrestrial systems from the 1755–1780 MHz band into the 2025–2110 MHz band. The process of relocating Federal systems into the band is currently on-going.

11. Multiple commercial space launch operators either have used or have indicated that they plan to use the 2025–2110 MHz band to support their launch operations. SpaceX has used this band to send command signals to the first stage of its Falcon 9 launch vehicle as it lands either on a recovery drone ship or on land. Blue Origin has used

this band to transmit command signals to its suborbital New Shepard launch vehicle and plans to use it in the future for orbital launches of its New Glenn launch vehicle. Rocket Lab has used this band to conduct ground testing for its Electron Launch Vehicle and plans to use it in the future to command the third stage of its launch vehicles. These operations have been conducted using STAs issued by the Commission under its Part 5 experimental rules. The Commission expects that use of this band by the commercial space launch industry will continue to grow in the future. The Commission seeks comment on the projected future use of this band for space launch activities.

12. To support the commercial space launch industry, the Commission proposes to amend the Allocation Table by adding a co-primary non-Federal Space Operation (Earth-to-space) (space-to-space) allocation to the 2025–2110 MHz band. Given the heavy use of this band by BAS, CARS, and LTTS, and the increasing Federal use of the band, including for Federal space systems, these service rules will need to provide for coordination with these operations. As the Commission expects the number of launches to continue to increase in the future, the Commission believes that adopting this approach will be more feasible than relying on the current STA process. The Commission seeks comment on this allocation proposal.

13. The Commission proposes to allow use of the entire 2025–2110 MHz band without any restriction on where licensed launches may occur. The Commission notes that for the Space Operation allocation for the 2200–2290 MHz band, the Commission considered whether the use of that spectrum should be restricted to launches at Federal ranges. In addition, the Space Operation allocation the Commission is adopting for the 2200–2290 MHz band for space launches restricts non-Federal space operations to specific portions of the band. Both of these restrictions were requested by NTIA to facilitate coordination with the existing Federal users of this bands. The Commission seeks comment on whether limiting launches to certain frequencies or locations is needed to facilitate coordination between non-Federal and Federal users. Should use of this band for space launches be limited to only portions of the band? Considering the restrictions placed on Federal uses of the band, should these same restrictions be placed on new non-Federal uses of the band? Are other restrictions also required to protect the incumbent and incoming Federal uses of the band? Is there any reason to restrict use of the

band to launches conducted at specific locations such as at Federal ranges or FAA licensed launch sites given that the Commission are not placing any such restrictions on use of the Space Operation allocation the Commission are adopting for the 2200–2290 MHz band? Considering the Federal and non-Federal uses of the band, would it serve the public interest to adopt any of these restrictions? The Commission notes that many recent launches using this band have been conducted from either Federal ranges or FAA licensed launch sites. For example, SpaceX has launched from Cape Canaveral, Florida and Rocket Lab has conducted launch testing at Wallops Island, Virginia. However, Blue Origin has launched from Van Horn, Texas, which is neither an FAA licensed launch site or at a Federal range. Should use of the Space Operation allocation be limited to space launches or are there other kinds of space operation uses that may be appropriate for this band? Are there any other restrictions that are needed to facilitate sharing of the band between the non-Federal space operation service and the other users of the band, in particular BAS, CARS, and LTTS?

14. *2200–2290 MHz Band.* In addition to a Space Operation allocation, both the International Table and the Federal Table include a Mobile Service allocation allowing aeronautical mobile use. Would it serve the public interest to modify the non-Federal allocations for the 2200–2290 MHz band to include a Mobile Service allocation in this band to facilitate licensing of commercial space launch operations in the commercial space launch operations context? The Commission notes that three frequencies in the 2360–2395 MHz band are available for both Federal and non-Federal use for telemetry and telecommand of launch and reentry vehicles under a Mobile allocation and its Part 87 rules. This use is identical to the launch vehicle telemetry for which space launch providers have obtained STAs for the 2200–2290 MHz band. To harmonize the allocation status and the applicable service rules of the 2200–2290 MHz and 2360–2395 MHz bands, it may be appropriate to adopt a Mobile allocation for the 2200–2290 MHz band in addition to the Space Operation allocation the Commission has adopted. Therefore, the Commission seeks comment on whether the Commission should add a non-Federal secondary Mobile allocation to the 2200–2290 MHz band. What are the benefits and costs of subjecting commercial space launch operations to both terrestrial mobile service and space operations

regulatory frameworks? Does the Commission need to define the boundary between, when and how mobile service rules or space operations rules apply to space launch operations, if both allocations together cover the operations? If so, would it serve the public interest to make this boundary depend on the stage of the launch vehicle—earlier or later stages? How should the Commission define such stage boundaries? If the Commission were to divide space launch operations into stages, how should the Commission define space launch vehicles and should such a definition include any spacecrafts carrying payloads to their orbital locations? What are the domestic and international legal and policy ramifications of adopting such a clear dual allocation and service rules approach where the communications emanating from the same equipment would be considered under both terrestrial and space services allocations, and be regulated under one or the other, depending on the launch vehicle's position in its trajectory and distance from the earth? Alternatively, should the Commission regulate a space launch vehicle's operations throughout its trajectory under a single rule part? Commenters should discuss how the Commission can provide the most flexibility with the least regulatory burden while serving the public interest.

15. If the Commission adopts a non-Federal secondary Mobile allocation, the Commission proposes to implement this allocation by modifying the footnote to the U.S. Table that the Commission has adopted to implement the Space Operation allocation in the 2200–2290 MHz band. Similar to the non-Federal space operations allocation, this mobile allocation footnote would restrict use of the band to pre-launch testing and space launch operations and require coordination of use of the band with NTIA prior to each launch. Are all of these restrictions appropriate for the Mobile allocation in this band? The Federal Mobile allocation for the 2200–2290 MHz band is currently restricted to line-of-sight use only, including aeronautical telemetry; excludes flight testing of manned aircraft; and prohibits the introduction of high-density mobile systems. Would it be appropriate to adopt any of these limitations on use of the non-Federal Mobile allocation? Are any other limitations on use of the non-Federal Mobile allocation necessary?

16. The Space Operation Service is defined in the Commission's rules as being “concerned exclusively with the operation of spacecraft, in particular space tracking, space telemetry, and

space telecommand.” As the non-Federal Space Operation allocation the Commission has adopted in the Report and Order is limited to use for pre-launch testing and during space launch operations the use of this allocation is limited compared to what would normally be permitted under a Space Operation allocation. The Commission seeks comment on whether a greater range of non-Federal space operations should be permitted under the Space Operation allocation in this band—*i.e.*, should the restrictions the Commission has placed on use of this allocation be modified, reduced, or eliminated? Expanding the scope of this allocation could be especially useful for permitting communication between spacecraft during orbital and suborbital missions. For example, SpaceX has used the 2200–2290 MHz band for communication between its Dragon spacecraft and the International Space Station. As the commercial space industry continues to develop, the need for communication with and tracking of spacecraft is likely to increase. Is there a need for a non-Federal space operation (space-to-space) allocation in this frequency band, similar to the Federal allocation? In considering modifying any restrictions on non-Federal use of this band, the Commission must keep in mind the need to protect Federal operations in this band. How could permitting greater non-Federal space operations activities in the band be done while preventing harmful interference to Federal operations?

17. The non-Federal Space Operation allocation the Commission has adopted for the 2200–2290 MHz band is limited by US96 to four subbands: 2208.5–2213.5 MHz, 2212.5–2217.5 MHz, 2270–2275 MHz, and 2285–2290 MHz. Recent space launches that have accessed this band for telemetry using STAs have used different portions of the band than these four subbands. The fact that the channels used for these launches were successfully coordinated with NTIA indicates that it may be possible to provide additional flexibility to space launch operators rather than limiting access to only these four subbands. To provide this flexibility, the Commission proposes to remove the restriction in US96 limiting use of the band for non-Federal space operations to the four subbands. Instead, under this proposal use of the Space Operation allocation during pre-launch testing and space launch operations could potentially occur in any portion of the 2200–2290 MHz band. Because of the heavy use that Federal agencies make of this band, use of this band for launches will need

to be coordinated with NTIA. As Federal use of this band is likely to evolve over time, this coordination with NTIA will be necessary on a launch-by-launch basis.

18. While the Commission is proposing to remove the limitation on use of the Space Operation allocation to four subbands, it may still be appropriate to place some limitations on the spectrum that may be used during launches because the band will be shared with Federal users. The subbands currently in US96 are each 5 megahertz wide with a total of 20 megahertz of spectrum potentially available for use for each launch. Should non-Federal use of this allocation be limited to channels with a necessary bandwidth of 5 megahertz as is currently required by US96? Should there be a limit on the total amount of spectrum available for use during a launch? If the Commission places limitations on the bandwidth in each channel or total bandwidth per launch, should there also be a means for these limits to be waived if there is sufficient justification? If the Commission leaves in place the restriction on non-Federal use of the 2200–2290 MHz band to a limited set of subbands, should the subbands be adjusted to reflect the fact that recent launches have used channels outside of these subbands?

19. While the *NPRM* proposed that the Commission adopt a primary Space Operation allocation for the 2200–2290 MHz band, the Commission has instead adopted a secondary allocation. Several commenters advocate adoption of a primary allocation claiming that it will lead to streamlined licensing, eliminate repeated licensing work, require less coordination, and provide greater certainty with respect to approvals. Although the secondary allocation the Commission adopts is clearly preferable to the current STA process, adopting a primary allocation may nevertheless be the most appropriate long-term band management policy. Adopting a primary allocation would place commercial launch operators on an equal footing with other users of the band and provide greater certainty to incentivize investment as the commercial space industry continues to expand with more frequent launches, privately developed launch facilities, and manned space flights. Therefore, the Commission seeks comment on whether it should adopt a primary Space Operation allocation for the 2200–2290 MHz band. The Commission notes that even if it adopts a primary non-Federal allocation for this band, individual launches would still have to be coordinated with NTIA

because of the heavy existing Federal use of the band.

20. *5650–5925 MHz Band.* The 5650–5925 MHz band is used for radar tracking of launch vehicles during launches. This often involves placing a radar transponder on the launch vehicle, which responds to a ground-based radar signal that transmits tracking information back to the tracking station. Because launches in the past have occurred at Federal ranges, the radar tracking stations used during the launches have been Federal facilities. However, commercial launch providers have obtained experimental STAs for transponders on the launch vehicles that operate in the band.

21. The *NPRM* made two alternate proposals for providing commercial entities access to this spectrum for radar tracking during launches. Under the first proposal, the *NPRM* proposed to add a footnote to the U.S. Table providing a primary non-Federal radiolocation service allocation. The footnote would restrict use of the allocation to launches and pre-launch testing and would require coordination with NTIA. In a second proposal, the *NPRM* proposed to add a primary non-Federal radiolocation service allocation to the 5650–5925 MHz band with a footnote containing the same restrictions. The *NPRM* asked a number of questions concerning use of the band, such as the operational requirements for radar tracking during space launches, whether other radiolocation bands could be used, and if there are compatibility issues with Intelligent Transportation Systems that are primary in a portion of the band.

22. In response to the 2013 *NPRM*, the Commercial Spaceflight Federation recommended adding a non-Federal allocation to the 5650–5925 MHz band, noting that the band is used by Federal radar facilities to track launches from government-owned facilities. The New Mexico Spaceport Authority applauded the Commission in recognizing the potential to mix Federal and commercial equipment within one system or service and requests that the Commission design future regulations to promote interoperability between Federal and commercial systems. The Aerospace Industries Association argued that no allocation is needed for the band, given that the band is used for radar tracking from the Federal launch range, which is managed by the range. Orbital ATK endorsed adding a non-Federal allocation to the band at 5765 MHz. No commenters who have discussed the needs of the commercial space industry with Commission staff in the past year have indicated an interest

in using this band during space launches. In recent years, only one licensee has obtained licenses for use of the 5650–5925 MHz band.

23. The Commission seeks further comment on whether to adopt a non-Federal Radiolocation allocation for the 5650–5925 MHz band by adding a footnote to the U.S. Table. Should such an allocation be limited to use for pre-launch testing and tracking of launch vehicles? Radar transponders transmitting from commercial launch vehicles require licenses from the Commission, even if the vehicle is launched from a Federal or commercial launch site and tracked by a Federal ground-based radar tracking facility. As there currently is no non-Federal Radiolocation allocation for this band, the Commission issues experimental STAs to authorize operations in the 5650–5925 MHz band to support commercial launches. This case-by-case procedure may become more burdensome as the commercial launch industry grows. However, given the apparent low interest in this band for radar tracking during launches, there may be no need to adopt this allocation. Hence, the Commission seeks comment on the number of launches likely to need access to this band in the future. Given that recent STAs issued for use of this band have used only the 5758–5772 MHz portion of the band, should the allocation be limited only to a portion of the band? Should the allocation be primary or secondary? Should use of the band be limited to specific locations such as Federal ranges or FAA-licensed launch sites?

24. In addition to having an allocation for Federal radiolocation, the 5650–5925 MHz band is shared with other services. The 5850–5925 MHz band has a primary non-Federal Mobile allocation with use of this allocation in the 5895–5925 MHz band limited to the Intelligent Transportation System radio service. Because launch facilities are generally not located near public roads and the signal emanates from high in the sky, ensuring a weak signal at ground level, the Commission expects negligible, if any, impact on Intelligent Transportation Systems in the upper portion of the band. Is this expectation reasonable? If use of this band for space launches would impact Intelligent Transportation Systems in the upper portion of the band, are there specific accommodations the Commission could take to minimize that impact? The 5650–5895 MHz band is currently used by Unlicensed National Information Infrastructure (U–NII) devices operating under the Commission’s Part 15 rules. U–NII devices operating in the 5650–

5725 MHz portion of the band employ dynamic frequency selection (DFS) to detect the presence of radar signals to avoid causing interference. Will DFS successfully enable coexistence between U–NII devices and space launch radars in this portion of the band? In the 5725–5850 MHz band, U–NII devices operate without the use of DFS. Are there steps the Commission could take to minimize interference between space launch radar operations and U–NII and ITS operations in the upper portion of the band? If interference between these operations is likely, should the Commission limit this new radar allocation to the frequencies below 5725 MHz? The 5850–5925 MHz band is also allocated to the fixed-satellite service in the uplink direction with use limited to international, inter-continental systems. Given the limited number of earth stations and limited number of launch sites, the Commission expect that sharing would be feasible though coordination. The Commission seeks comment on this view.

25. *Licensing and Technical Rules for Space Launch Operations.* In this section, the Commission proposes to adopt rules for new non-Federal space launch operations. As an initial matter, the Commission seeks comment on how to define non-Federal “space launch operations.” The STAs that the Commission has granted in the 2200–2290 MHz band, for example, have included telemetry from the launch vehicle and the payload, during the initial space launch, the orbital phase (including docking with the ISS), and return and reentry of the space launch vehicle. If the Commission were to cover communications needs during these operations, do these operations include all activities that may be needed for a successful commercial space launch operation? Would it serve the public interest to include all of these operations in the definition of “space launch operations”? Is there a need to limit or further expand the definition to include other space operations? The Commission also seeks comment on whether and how to define “space launch vehicle” and whether there should be any distinction between a “launch vehicle” or a “reentry vehicle” for space launch operations purposes. The Commission seeks to establish rules that flexibly, efficiently, and effectively support the evolving spectrum requirements of commercial space launch operations while continuing to adequately protect vital Federal operations in the bands. In that regard, the Commission seeks comment on the appropriate licensing and technical

rules to meet these goals. First, the Commission seeks comment on the appropriate licensing framework for the non-Federal space launch operations in the 2200–2290 MHz band, the proposed non-Federal space launch operations in the 420–430 MHz and 2025–2110 MHz bands, and the potential non-Federal launch tracking operations in the 5650–5925 MHz band. The Commission also seeks comment on which Commission rule parts should apply to different elements of space launch operations, and on how to integrate these various provisions to facilitate operations of space launch services, including potentially by creating a new stand-alone rule part. The Commission proposes and seeks comment on specific licensing rules, such as rules governing scope of service, eligibility, license period, application processing rules, and coordination requirements, as well as technical rules that will foster interoperability of equipment used for non-Federal and Federal launches and rules regarding equipment authorization. Finally, the Commission seeks comment on whether the Commission should update any rules regarding space launch vehicle use of aeronautical telemetry in the 2360–2395 MHz band.

26. *Applicability of Certain Sections of Part 87 (Aeronautical Mobile).* Existing licensing and operating rules under Part 87 currently support commercial space launch operations in the 2360–2395 MHz band and offer an established regulatory approach. The telemetry and telecommand uses identified for the non-Federal space launch operations in the 2200–2290 MHz band and the proposed non-Federal operations in the 420–430 MHz and 2025–2110 MHz bands are similar to space launch telemetry uses permitted in the non-Federal 2360–2395 MHz band, which are supported under Part 87, Subpart J flight testing rules. The Commission seeks comment regarding which rules under Part 87 would be the most appropriate model for non-Federal operations in the 2200–2290 MHz, 420–430 MHz, and 2025–2110 MHz bands, as well as associated telemetry and telecommand functions, and on the benefits and costs of applying such rules. In Appendix D, the Commission sets forth proposed Part 87 rules that could be applied to these operations in these bands, if the Part 87 model is adopted.

27. The Commission notes that the initial launch and reentry phases of a space launch operation share some, but not all, of the characteristics of conventional aviation services, specifically flight test and aeronautical

mobile telemetry uses, which are regulated under Part 87. Space launch operations may need additional flexibility for communications with ground stations in the United States, abroad, in space, and in some instances with other space stations, including satellites. The Commission also notes that certain Part 87 licensing and operational rules, while relevant to conventional aviation services generally, may not be appropriate for space launch operations. The Commission seeks comment on whether there are Part 87 general licensing and technical rules that may not be applicable for purposes of developing a regulatory framework for commercial space launch operations.

28. *Applicability of Part 90 (Private Land Mobile).* With respect to launch vehicle radar tracking functions, the Commission seeks comment on administering the proposed 5650–5925 MHz band radiolocation allocation as part of the Radiolocation Service, which is currently regulated under Part 90. In what phases of space launch operations is this radar tracking function needed? Are there any space launch operations phases, including orbital phases, that may require the Commission to formulate additional radar tracking rules and, if so, what are those and why would they be needed? The radiolocation uses for the 5650–5925 MHz band differ from the aeronautical telemetry uses governed under the Part 87 rules. Because radiolocation operations are generally regulated under Part 90, the Commission proposes to apply the existing licensing framework to the 5650–5925 MHz radiolocation use. This would apply to ground stations as well as to associated transponders affixed to the space launch vehicle for tracking purposes. The Commission seeks comment on the benefits and costs of this proposal and on other possible licensing frameworks. Specifically, is Part 90 the appropriate licensing mechanism for ground stations and transponders affixed to the launch vehicle or should ground stations and associated transponders be licensed under Part 87? In Appendix D, the Commission set forth proposed Part 90 rules that could be applied to these operations in this band, if the Part 90 model is adopted.

29. *Applicability of Part 25 (Satellite).* The Part 25 rules provide for authorization of both space stations and earth stations. Under Part 25, a “space station” is defined as a station located on an object which is beyond, is intended to go beyond, or has been beyond, the major portion of the Earth’s atmosphere; “space

radiocommunications” is defined as any radiocommunication involving the use of one or more space stations. In addition, Part 25 includes a definition for “spacecraft” as a man-made vehicle which is intended to go beyond the major portion of the Earth’s atmosphere. Given that space launch vehicles are intended to go beyond the major portion of the Earth’s atmosphere, safely deliver their payloads (typically satellites), and then reenter the atmosphere, the Commission seeks comment on the benefits and costs of applying the definition of space stations under Part 25 of its rules, to radio communications stations on space launch vehicles. Additionally, some communications between launch vehicles and ground stations/earth stations may be conducted consistent with the Commission’s rules applicable to earth stations and a space operations allocation in the U.S. Table of Frequency Allocations. The Commission notes that the Part 25 rules, including space station and earth station licensing processes, are designed to license spectrum use by commercial space services. The Commission seeks comment on which Part 25 rules could be applied, or used as a model for, the licensing of a space launch vehicle’s communications through its full trajectory, and on the benefits and costs of this approach.

30. *Integrating the Authorization of Space Launch Operations across Rule Parts.* The Commission recognizes that while a space launch operation may involve distinct telemetry, tracking, and command operations uses, it may be more practical to address all functions under a stand-alone rule part. Another option would be to create one or more subparts specifically to support commercial space launch telemetry, tracking, telecommand, and other communications needs of space launch operations. These subparts could establish the conditions under which frequencies would be licensed for use during a space launch. The Commission seeks comment on these approaches or on any alternate approaches. How can the Commission facilitate reliable access to spectrum while meeting the changing communications needs of space launch operations during any point of a space launch vehicle’s trajectory? The Commission seeks comment on the best way to authorize the use of the relevant spectrum bands to cover space launch operations, starting at the launch site through the launch vehicle’s trajectory and until its final destination, including reentry, in a flexible, efficient, and effective manner.



Commenters should discuss the costs and benefits of any licensing approach that they propose.

31. *Licensing Rules for Space Launch Operations.* In the *Report and Order*, the Commission adopts a secondary allocation for the 2200–2290 MHz band to support the current level of commercial launches and enable the continued growth of the commercial space launch industry. Consistent with the *Report and Order*, the Commission proposes certain service rules for the 2200–2290 MHz band and for the additional bands discussed herein.

32. As noted, the non-Federal space operations allocation the Commission has adopted for the 2200–2290 MHz band includes a restriction and limits pre-launch testing and space launch operations to the 2208.5–2213.5 MHz, 2212.5–2217.5 MHz, 2270–2275 MHz, and 2285–2290 MHz subbands. Consistent with the current allocation, the Commission seeks comment on restricting the use of the 2200–2290 MHz band for pre-launch testing and space launch operations to these four subbands in its service rules. Contingent on the adoption of this proposal, the Commission proposes to permit licensees to use additional frequencies outside the four subbands upon adequate justification for why such additional frequencies are necessary and in the public interest, on a case-by-case basis. Any requirement for frequencies for use during launches will have to be balanced with the use of the band by Federal systems and coordinated with NTIA. As noted in the *Report and Order*, any use will be limited to the telemetry and tracking operations of launch vehicles during pre-launch testing and during space launch operations. In the *FNPRM* above, however, the Commission also seeks comment on whether to remove the allocation restriction limiting use of the 2200–2290 MHz band for non-Federal space operations to the four subbands, such that use of the Space Operation allocation during pre-launch testing and space launch operations could potentially occur in any portion of the 2200–2290 MHz band. Thus, the Commission also seeks comment on whether, to provide greater flexibility in spectrum use, the Commission should remove any presumptive limitation to the four subbands in the service rules as well given that the use of any spectrum in the 2200–2290 MHz band would be separately coordinated for each launch.

33. The Commission also proposes to add a provision restricting use of the proposed 420–430 MHz allocation to the transmission of flight termination signals during pre-launch testing and

launches. This transmission would provide for a flight termination signal if a space launch vehicle goes astray. Because a launch vehicle which has gone off-course can endanger lives, the flight termination signal link must be extremely reliable. Therefore, it may not be possible to permit additional uses—particularly those that are not safety-of-life services—in the band.

34. Further, the Commission proposes to restrict the commercial launch use of the 2025–2110 MHz band to telecommand uplink transmissions from the ground controller stations to the space launch vehicle in the event that the Commission adds a non-Federal Space Operation allocation to this band. This allocation would enable space launch providers to transmit to their space launch vehicles during the launch and recovery phase of operations. The largest use of the 2025–2110 MHz band is for the BAS. This band is heavily used by BAS, CARS, and LTTS operations, as well as by Federal entities for space operations, space research, and the earth exploration satellite service. Considering these existing operations, as well as operations by non-Federal launches on a special temporary authority basis to date, is it feasible to accommodate uses in addition to the space launch telecommand uses described above?

35. The Commission further proposes to add a restriction to limit use of the 5650–5925 MHz band to launch vehicle tracking. Although frequencies in the 5650–5925 MHz band are available to support certain non-Federal uses, the predominant use in the band is radiolocation, with Federal entities using the band for a wide variety of radar applications, including launch vehicle tracking. In order to promote interoperability with existing Federal radar tracking functions and to limit impact to other uses, the Commission proposes to restrict commercial space launch vehicle uses of this band to radar tracking.

36. The Commission seeks comment on these proposals. In particular, the Commission seeks comment on whether these proposals provide sufficient flexibility for existing and future needs of non-Federal launch activities or whether additional uses should be accommodated if technically feasible. Additional uses in the bands beyond those specified above may not currently be possible due to technical characteristics and existing uses of the bands. However, the Commission seeks comment on whether to provide flexibility to enable other uses if it determines such uses are technically feasible and will not restrict or cause

harmful interference to existing uses and incumbent operations. The Commission seeks comment on the costs and benefits of limiting the scope of uses in these bands. Commenters also should discuss what other measures the Commission should consider to promote a competitive marketplace for space launch operations and services.

37. *Eligibility.* In the *Report and Order*, the Commission explains that opening this spectrum to the commercial space launch industry would encourage entrepreneurial efforts by providing commercial space entities certainty in their access to the spectrum that they need to promote the advance planning and investment necessary for future space launch activities. The Commission therefore proposes to limit eligibility to hold authorizations for the 2200–2290 MHz band as well as the proposed 420–430 MHz, 2025–2110 MHz, and 5650–5925 MHz bands to non-Federal entities that conduct space launch operations. The Commission seeks comment on the extent to which the supplemental eligibility criteria for flight test stations, set forth in § 87.301, would be an appropriate model for space launch license eligibility. To be eligible for a new commercial space launch license, the Commission proposes that the applicant must qualify as one of the following: (1) An operator or manufacturer of a commercial space launch or reentry vehicle or space launch or reentry vehicle components; (2) a parent corporation or its subsidiary if either corporation is an operator or manufacturer of a space launch or reentry vehicle or space launch or reentry vehicle components; or (3) an educational institution or a person primarily engaged in the design, development, modification, and flight test evaluation of a launch or reentry vehicle or launch or reentry vehicle components. The Commission also seeks comment on whether to allow other entities that provide space-based services, including satellite service providers, to be eligible for commercial space launch licenses. The Commission seeks comment on these eligibility restrictions, including whether to expand or further restrict the scope of eligible entities.

38. Currently, each application for a flight test license under Part 87, Subpart J is required to include a certification to establish the applicant's eligibility for a license. Similarly, the Commission proposes to use this as a model to require an applicant for any commercial space launch frequencies to certify the eligibility criteria proposed above. The Commission tentatively concludes that requiring this certification would be in



the public interest and impose minimal burden on eligible entities. The Commission seeks comment on this proposal as well as on whether to impose any additional certification requirements. In some cases, the Commission has also required subsequent certifications by a licensee that stations comply with applicable technical requirements, such as in § 25.133 of the Commission's rules. The Commission seeks comment on whether to require such a certification, through an appropriate check-box, by either license applicants or licensees.

39. *Shared Frequency Use and Cooperative Use of Facilities.* The Commission proposes to provide non-Federal space launch operators access to the 2200–2290 MHz band as well as the proposed 420–430 MHz, 2025–2110 MHz, and 5650–5925 MHz bands on a shared, non-exclusive basis. The Commission traditionally has issued Part 87 licenses on a shared basis and not for the exclusive use of any licensee. Certain Part 90 radiolocation uses are also authorized on a similar shared basis. Similarly, the Commission's Part 25 satellite licensing rules also include provisions relating to shared and cooperative use of spectrum. Given that there is the potential for many different launch vehicle operators to use a given launch area, authorizing commercial space operations on a shared basis appears to be a reasonable approach for providing spectrum access for multiple space launch entities. It should be noted that, in this context, shared use status, while non-exclusive, does not mean that a licensee will be required to accept interference. The licensee will be entitled to interference protection for its launch operations. The Commission seeks comment on this proposal and request comments on other viable options.

40. Further, in the context of flight test operations, Part 87 generally limits authorizations of flight test land stations to only one per airport, but it requires that these stations be made available without discrimination to anyone eligible for a flight test station license. This rule has enabled the shared use of facilities, which has reduced costs to licensees and promoted efficient use and competition in the aviation industry.

41. The Commission seeks comment on whether a similar non-discrimination policy for all space launch operations in the bands at issue is also necessary. The Commission is aware that there are launch sites that currently have ground transmitters for shared use, and it seeks comment on the practices involving ground stations at Federal ranges and

FAA-licensed sites. Should the Commission adopt rules providing for non-discriminatory access of these facilities by non-Federal space launch entities? The Commission seeks comment on whether non-discriminatory shared use of these facilities is necessary to support the existing and future needs of commercial space launch entities. The Commission seeks further comment on the costs and benefits of a cooperative use of facilities approach, as well as other facilities that may require non-discriminatory access and ways to streamline these practices.

42. In licensing space launch operations, the Commission's goals are two-fold: (1) To encourage innovations and investments in the U.S. space commerce; and (2) to ensure a regulatory environment conducive to the establishment of a competitive U.S. commercial space launch sector while protecting Federal and other users in the bands. In this *FNPRM*, the Commission seeks comment on various licensing models with these goals in mind and aim to bring regulatory certainty in the marketplace while minimizing administrative burden and duplicative regulations.

43. *Site-Based Licensing.* A number of Part 87 services, including flight test station licenses, and Part 90 radiolocation services are authorized on a site-by-site basis. A site-based licensing model is helpful in a shared use situation as fixed, well-defined areas of operation simplify coordination during the application process for services requiring frequency coordination, and facilitate intensive spectrum sharing. Moreover, this approach enables the Commission and interested stakeholders to identify quickly licensees in the band and their specific areas of operation in the event interference issues arise, which allows parties to resolve such issues in the shortest timeframe practicable. The Commission seeks comment on these conclusions and whether to issue space launch licenses on a site-by-site basis. Would site-based licensing meet the needs of space launch operations? Does site-based licensing enable the safe and efficient operation of shared frequencies while providing the certainty and flexibility needed to support the existing and future needs of commercial space launch entities? Are space launch activities centered usually around certain sites? If the Commission were to adopt site-based licensing, how should the it define a site?

44. *Other Licensing Options.* The Commission also seeks comment on whether there are any other licensing models that may be suitable in the space

launch operations context. For example, would it be appropriate to license specific space launch vehicles and list applicable ground stations (including those at the launch sites licensed by FAA) as authorized communications points with those vehicles? Another option would be to adopt a new approach combining various aspects of space-based services and aeronautical service licensing rules. If the Commission does so, what are the rules that would be most appropriate for licensing space launch services? Stations on space launch vehicles could be licensed similar to space stations and the communicating ground/earth stations could be licensed on a single or multiple site basis. A ground/earth station's operations also could be conditioned, for example, on filing of a certification before a planned space launch to certify that any required frequency coordination has been satisfactorily completed and the relevant ground/earth stations are in compliance with all applicable legal and technical rules that the Commission might adopt for space launch operations. Or licensing of space launch operations could be similar to licensing models applicable to certain wireless services such as the 3650–3700 MHz band, and the 71–76 GHz, 81–86 GHz, 92.0–94.0 GHz, and 94.1–95.0 GHz bands. Pursuant to these approaches, space launch operators could have access to various spectrum bands on a non-exclusive, yet protected, basis, but would be subject to measures designed to promote shared use of spectrum, such as a registration and frequency coordination requirement prior to each launch. With respect to the terrestrial nationwide, but non-exclusive, licensing approach, which typically has been used for shorter-distance terrestrial wireless services, could such a licensing approach be effective as applied to all phases of operations, including orbital phases? Could such a licensing process streamline the information that would be needed for initial licensing and then registration and coordination prior to a planned launch? The Commission seeks comment on the feasibility, costs, benefits, and potential challenges (if any) associated with each of these proposals.

45. Comments should discuss any needed changes that should be made to reduce potential administrative burdens and streamline the site-based licensing process as well as any other alternatives. The Commission also seeks comment on service area definitions as well as alternatives and the costs and benefits of proposed alternatives.

46. *Authorized Bandwidth.* The Commission proposes to grant licenses for non-Federal operations in the 2200–2290 MHz band using a 5 megahertz bandwidth, similar to NTIA’s limit for transmissions by Federal space-to-Earth operations in the band. The Commission further seeks comment on permitting licensees to use larger bandwidths upon adequate justification for why such bandwidth are necessary and in the public interest, on a case-by-case basis. Any requirement for additional bandwidth for use during launches will have to be balanced with the use of the band by Federal systems and coordinated with NTIA. The Commission’s review of experimental authorizations requested for the 2200–2290 MHz band indicates that the majority of applications involved requests for bandwidths of less than 5 megahertz. The Commission tentatively concludes that licensing the 2200–2290 MHz band in 5 megahertz channel blocks will likely accommodate most non-Federal launch vehicle operations in the band and provide licensees with greater flexibility than authorizations with a smaller bandwidth. This approach is consistent with NTIA’s stated preference. The Commission seeks comment on this approach as well as other approaches. The Commission notes that 2360–2395 MHz band space launch telemetry and telecommand operations may be authorized in bandwidths of 1, 3, and 5 megahertz. Should the Commission similarly authorize the 2200–2290 MHz band in a range of bandwidths?

47. As discussed, the Commission is proposing to allocate the entire 420–430 MHz and 2025–2110 MHz bands for flight termination and telecommand uses, respectively, and is seeking comment regarding the portions of the 5650–5925 MHz band that should be allocated for launch vehicle tracking purposes. The Commission seeks comment on the appropriate bandwidth or spectrum blocks for the proposed 420–430 MHz, 2025–2110 MHz, and 5650–5925 MHz allocations. The Commission notes that the bandwidths associated with experimental authorizations granted for frequencies in the 2025–2110 MHz and 5650–5925 MHz bands have varied in size. The Commission seeks comment on the typical and/or necessary bandwidths applicable to the space launch uses specified in this proceeding. Consistent with an NTIA recommendation, the Commission further seeks comment regarding the 420–430 MHz band, specifically on “the most appropriate frequencies . . . for each designated

launch facility based on which frequencies can be supported for sending command destruct/flight termination signals.”

48. *License Term and Renewal.* The Commission historically has established ten-year terms for wireless radio service licenses, including Part 87 aviation and Part 90 radiolocation licensees. In the satellite licensing context, most satellites are authorized for a 15-year license term. The Commission tentatively concludes that ten-year terms will provide certainty and flexibility for space launch providers and therefore proposes to issue commercial space launch licenses for ten-year terms. The Commission recognizes, however, that the spectrum and use must be carefully managed and coordinated due to the heavy use of these bands, and the Commission notes that it has granted shorter license terms for Part 87 flight test stations pursuant to the frequency coordination process as a means to manage and ensure periodic reevaluation of possible interference issues. Several commenters have suggested a shorter five-year period as an appropriate license term. The Commission seeks comment on alternative license terms.

49. The Wireless Radio Services (WRS) proceeding established the process for renewing a site-based license. Specifically, it provided that a site-based WRS licensee will meet our renewal standard if it can certify that it is continuing to operate consistent with its most recently filed construction notification (or most recent authorization, when no construction notification is required), and make the certifications regarding permanent discontinuance and substantial compliance with Commission rules and policies that are applicable to all renewal applicants seeking to avail themselves of one of the renewal safe harbors. Services subject to this site-based renewal standard include the Part 90 Radiolocation Service. The Commission proposes to extend this renewal standard to licensees in the 5650–5925 MHz band to the extent the Commission applies the Part 90 Radiolocation Service rules to this band. The Commission request comment on this proposal.

50. The *WRS Order* does not apply to Wireless Radio Services that are licensed by rule or on a “personal” basis or that have no construction/performance obligation. This includes most Part 87 services. The Commission seeks comment on whether to require commercial space launch licensees make a “renewal showing,” for instance, certifying that it is operating consistent

with its initial application for authorization or that it has complied with the required coordination. The Commission seeks comment on whether this renewal showing is warranted for the bands at issue given the heavy use by Federal agencies. The Commission believes that requiring a renewal showing in these bands would facilitate efficient spectrum use by ensuring that licensees use the spectrum productively, collaboratively, and in compliance with Commission rules during their initial license terms. The Commission seeks comment on the costs and benefits of imposing a renewal requirement for commercial space launch operations licensees.

51. *Application Process.* The Commission seeks comment on the application process to be used to assign commercial space launch licenses. As an initial matter, the Commission seeks comment on whether assignment of space launch operations licenses is subject to Section 309(j) of the Communications Act. The Commission notes that, while Section 309(j) of the Communications Act requires that it assign spectrum licenses through the use of competitive bidding for mutually exclusive license applications, the shared, non-exclusive licensing the Commission is proposing for the spectrum bands at issue would not result in mutually exclusive applications and thus would not be subject to such competitive bidding requirements. However, where Section 309(j) applies and to the extent that the Commission determines that it is in the public interest to adopt a licensing scheme that would result in mutually exclusive license applications, it proposes to use the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission’s rules. The Commission seeks comment on these conclusions and proposals.

52. With respect to application framework, the Commission is aiming to establish an application framework that would increase the regulatory certainty while reducing the administrative burden. One approach would be to apply the existing licensing framework for Part 87 and Part 90 licensees to commercial space launch operations applications. Currently, applicants for Part 87 flight test stations and Part 90 radiolocation licenses are required to submit FCC Form 601 and associated schedules through the Universal Licensing System (ULS). The Commission seeks comment on requiring applicants seeking authorization for 2200–2290 MHz as well as the proposed 420–430 MHz, 2025–2110 MHz, and 5650–5925 MHz

frequencies to file an FCC Form 601 and applicable schedules through ULS under the appropriate rule part designation. The Commission seeks comment on the benefits and costs of this approach. Another approach would be to use aspects of Form 312 and Schedule S, with narrative legal and technical information similar to licenses under Part 25 and filing in the International Bureau Filing System (IBFS). The Commission seeks comment on these and any alternative approaches.

53. Depending on the licensing scheme, for example, if the Commission adopts site-based licensing, would it be in the public interest to license the bands individually and use separate applications for separate spectrum bands? The Commission recognizes that not all operators will seek authorization for all of the bands at issue. Moreover, even where an applicant seeks multiple frequency bands, the applicant may not have the same site or area of operation for each of the bands. Would separate licensing of separate bands be less burdensome and provide more flexibility for applicants than a single multi-band license application process, similar to space station and earth station licensing? Would some of the differences in operational parameters be addressed more efficiently in a nationwide non-exclusive licensing application which would be coupled with a planned launch coordination registration? Are there any coordination issues in any of the frequency bands that would benefit from site licensing? Would it be simpler and less costly for the Commission to incorporate into the existing ULS or IBFS licensing processes and/or forms? What are the most efficient and effective way to license space launch operations that will provide operators with substantial benefits in terms of flexibility and efficiency, and will facilitate rapid implementation of this service?

54. To support the evolving communications needs of space launch entities and to provide flexibility sufficient to support innovation and investment in new technologies, the Commission seeks comment on how to allow applicants for space launch licenses to request authorization covering all launches within their license terms. The Commission also seeks comment on any measures needed to implement a multi-launch approach. For example, how should the Commission account for any variances in vehicle trajectory or spectrum usage from launch to launch? Should operators be required to file a modification or notification to change

certain characteristics of their license, and if so, which characteristics? Which of these variances must be reflected in the license and which ones can be addressed during a planned launch coordination stage on a case-by-case basis? What information should be required to be provided at the licensing application stage and the planned launch stage?

55. If the Commission were to adopt a site-based licensing system for commercial space launch operations, under this proposal, applicants may request: (1) Fixed stations on the ground, (2) mobile stations on the ground, and/or (3) stations on launch vehicles. For fixed ground site locations, each applicant would include in its application the specific coordinates for its proposed fixed sites. Because most space launch entities conduct launches at specific fixed sites, the Commission does not anticipate that providing this information will be burdensome. For mobile stations on the ground, each applicant would specify a mobile area of operation, as defined by a center point and radius governing their area of operation. Would this definition of mobile area of operation provide licensees the flexibility needed to support the existing and future needs of space launch entities? The Commission seeks comment on this proposed definition of mobile area of operation and on alternate definitions that might further its goals of providing flexibility to space launch operators while protecting other uses in the bands. For example, should the mobile area of operation be defined by a specific county or some other metric, such as an option that allows the applicant to describe in text the proposed area of operation? For stations on launch vehicles, these stations can be authorized within a specific area of operation with a center point and radius coordinated and approved by an approved frequency coordinator. The Commission seeks comment on these proposals. The Commission further seeks comment on whether an applicant's ground stations in the United States should be licensed separately from the launch vehicle stations with which they are communicating, or whether those operations may be encompassed within a single license.

56. Launch vehicle operations can be categorized broadly into two take-off modes: A vertical take-off like a traditional launch vehicle or a horizontal take-off from a runway. In addition, launch vehicles can be either expendable or reusable. Further, an operator may seek to use different

launch vehicles from launch to launch. The Commission seeks comment on whether the proposed site-based licensing framework and area of operation definitions will adequately accommodate all of these initial launch and reentry scenarios. To the extent that commenters believe that the proposals cannot be applied satisfactorily to all take-off, flight, and landing operations, the Commission requests comment on alternate licensing options or definitions. The Commission asks commenters to evaluate the costs and benefits of these proposals as well as alternatives or additional requirements that may be needed to improve the application process and to address the specific needs of the commercial space launch industry.

57. *ITU Process.* The Commission notes that the International Telecommunication Union (ITU) Radio Regulations are treaty provisions binding on the United States, and require that no transmitting station may be established or operated by a private person or by any enterprise without a license by or on behalf of the government of the country to which the station in question is subject. The Communications Act of 1934, as amended, provides the FCC with authority to take actions to implement the ITU Radio Regulations. The operations of the radio facilities on launch vehicles therefore must be authorized consistent with the ITU Radio Regulations. Because these operations could cause harmful interference in other countries, the Commission proposes to require applicants to submit appropriate draft documentation for submission to the ITU. The Commission seeks comment on this proposal and whether there are other alternatives, including bi-lateral coordination with affected countries, to coordinate and minimize harmful interference from any FCC authorized space launch operation.

58. The Commission seeks comment more generally on the ITU process as it relates to space launch vehicle licensing and operations. In the space station context, operators provide information to the Commission for submission to the ITU as part of the space station application or authorization process. If the Commission were to decide to apply this process, the Commission seeks comment on how and when launch vehicle operators should provide it with information for submission to the ITU. One possibility would be an approach where launch vehicle applicants or licensees submit information to the Commission for an ITU submission regarding an upcoming planned launch

a certain number of days prior to the planned launch. The Commission seeks comment on this approach and on alternatives. The Commission notes that this process is likely to vary depending on the licensing regime adopted, in particular on the scope of the license, such as whether a license covers multiple launches, including multiple launch trajectories. The Commission seeks comment on how the scope of the license should affect the applicant's submission of information for the ITU process.

59. *Space Launch Vehicle Operations Outside the United States.* The Commission observes that launch vehicle flight paths will commonly extend downrange beyond the U.S. territories, requiring the space launch vehicle to communicate with ground-based telemetry, tracking, and telecommand stations located outside of the United States, particularly in the 2025–2110 MHz and 2200–2290 MHz frequency bands. Such communications could be considered within the scope of a Part 87 authorization, for example, or be addressed by a licensing approach covering launch vehicles that would allow operations of such vehicles with ground stations both within and outside the U.S. territories, similar to a space station license under Part 25. The Commission seeks comment on these observations and the best way to authorize the use of the relevant spectrum bands to cover these operations.

60. The Commission seeks comment on whether it should view such launch vehicle operations as being authorized under the applicable site-based license subject to the requirement that such use is identified in the application and ITU coordination is completed. Or should such use be separately authorized? Would an alternative type of license better address operations with ground/earth stations outside the United States? The Commission notes that the ability of a launch vehicle operator to obtain ground station authorizations outside the United States may be dependent upon U.S. launch vehicle licensing and/or ITU coordination and/or notification procedures, as needed. The Commission seeks comment on the various licensing approaches, given the need for downrange communications, and on the role that ITU coordination should have in the particular licensing approach.

61. *Operations Inside the United States with non-United States Space Launch Vehicles.* The Commission seeks comment on how the Commission should authorize ground station operations in the United States with space launch vehicles that are not

authorized by the United States. For example, a space launch vehicle originating from a non-U.S. launch site and not otherwise authorized by the United States may seek to communicate with ground stations in the United States. Should the Commission adopt a process for ground station operators to request communications with these launch vehicles? For example, in the context of Part 25 satellite licensing, ground/earth station operators in the United States can apply for authority to communicate with non-U.S.-licensed space stations. In the space launch context, should applications be filed by the U.S. ground/earth station operators? And, if so, what information should be required?

62. *Alternative Approach.* The Commission also seeks comment on whether an authorization should be structured to cover all the bands allocated for commercial launch services, including operations outside the United States, discussed above. In other words, a single license application would be used to request multiple spectrum bands and associated uses on a single launch vehicle. For example, if a launch vehicle receives a flight termination signal in one frequency band and operates TT&C in a different frequency band, what are the costs and benefits to those operations being covered under a single space launch operations license? Would such an approach streamline our licensing processes or complicate them? What are the procedural and legal challenges that the Commission needs to consider with such a licensing approach? This approach also could be combined with the site-based or nationwide non-exclusive licensing approaches discussed above. Would such an approach serve the public interest? If the Commission were to adopt such an approach how can it be implemented? What licensing information should be required at the licensing application stage and the planned launch coordination stage? The Commission requests comment on these alternatives and seeks input on any other alternatives it should consider. The Commission asks that commenters discuss the impacts of a proposal, including associated administrative burdens or benefits.

63. *Frequency Coordination.* Frequency coordination minimizes the likelihood of interference between operations and facilitates the efficient use of spectrum. The Commission seeks comment on the appropriate coordination process between Federal and non-Federal users to be used prior to the grant of an application for space

launch frequencies as well as a coordination process for the ongoing use of these frequencies by operators during their license terms.

64. As discussed in the *Report and Order*, the Commission shares licensing authority with NTIA. Section 301 establishes the Commission's licensing authority over non-Federal stations, and section 303 grants the Commission authority to "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this [Act.]" NTIA maintains licensing authority over Federal stations pursuant to section 305(a). The Commission and NTIA's shared licensing authority is guided by an established set of procedures for developing regulations for radio services in the shared bands and for authorizing frequency use by Federal agencies and Commission licensees.

65. These procedures, set forth under the Memorandum of Understanding (MOU) between NTIA and the Commission, require the agencies to endeavor to give notice to each other of "all proposed actions that could potentially cause interference" to non-Federal and Federal operations respectively. NTIA coordinates with Federal spectrum users through the Interdepartment Radio Advisory Council (IRAC), a committee that includes representation from different government agencies, and typically includes a review period of 15 business days.

66. Until the Commission adopts licensing and technical rules, the Commission will continue to coordinate STAs issued to commercial operators for space launch purposes with NTIA, pursuant to the MOU. Even after licensing and technical rules go into effect, the Commission will continue to have to pre-coordinate licenses with NTIA. Although the Commission is adopting one and proposing three other permanent non-Federal allocations for these bands, coordination is still required for use of these frequencies, given the potential for impacts to and from Federal users in these bands, as well as the potential for harmful interference among non-Federal users. The Commission therefore seeks input on a coordination procedure that will adequately minimize the potential for harmful interference, while also minimizing burdens on launch operators to the extent possible.

67. *Pre-grant coordination.* To help ensure that users in a band are protected from harmful interference, the Commission has incorporated various

coordination requirements in its service rules, particularly in bands with shared use, in addition to the standard IRAC process. For example, applicants for flight test station licenses under Part 87, Subpart J are required to meet all applicable frequency coordination requirements. Section 87.305 requires that, prior to submission of an application to the Commission, a frequency advisory committee must coordinate all frequency requests with applicable Federal Government area frequency coordinators and provide recommendations regarding operating parameters. A flight test station application must include a frequency coordination statement from the frequency advisory committee, which includes a technical evaluation and recommendations to minimize interference. Once the application is submitted to the Commission, the request is then also submitted to NTIA for coordination, pursuant to the FCC and NTIA's MOU.

68. The Commission seeks comment on whether it should require applicants for a license in space launch frequencies to undergo a pre-application coordination requirement similar to that specified in § 87.305. This pre-application coordination requirement historically has been successful in minimizing the risk of harmful interference between flight test stations and other users of the band. Adopting a similar process may be helpful in the space launch context given the heavy usage of these bands by Federal entities as well as other space launch operators and the potential of interference to these operations. While it may, on first glance, seem that there is duplicative review, the pre-application coordination helps to narrow down the acceptable operating parameters of the use, thereby reducing administrative burdens and expediting review once the application is submitted. The Commission seeks comment on whether to apply this pre-application coordination process, or whether, in the alternative, it should impose a different coordination process.

69. In this regard, the Commission observes that Federal entities seeking to use the 2025–2110 MHz band for TT&C uplink purposes must complete a similar coordination process prior to submitting an application for authorization to NTIA. A Federal entity must coordinate with all BAS and other non-Federal incumbents that may be affected by the Federal operation prior to submitting an application, and must engage the local BAS frequency coordinator(s), where available, in support of achieving such coordination. To the extent that the Commission

adopts a non-Federal allocation in the 2025–2110 MHz band for TT&C uplink purposes, it seeks comment on whether to require commercial space launch operators seeking to use the band to follow the same pre-application coordination process to help ensure that launch operations will not cause harmful interference to applicable non-Federal and Federal incumbents in the band. Alternatively, the Commission seeks comment as to whether it should apply a different pre-application coordination, such as the process identified in § 87.305.

70. If the Commission determines it would be in the public interest to adopt a pre-application coordination requirement, should the Commission appoint a designated frequency coordinator to streamline the coordination process? The Commission designated the Aerospace and Flight Test Radio Coordinating Council (AFTRCC) as the frequency coordinating committee for non-Government flight test telemetry station assignments in the 1435–1535 MHz band and extended authority to the 2310–2320 MHz and 2345–2390 MHz bands. If the Commission decides to appoint a specific frequency coordinator, would it be in the public interest to extend AFTRCC's authority, or should the Commission appoint a different entity?

71. *Post-grant coordination.* Given that the license terms associated with permanent authorizations may span several years, the Commission seeks comment on coordination between space launch licensees and other users of the respective bands for separate launch operations. The Commission notes that experimental STAs are approved, and thereby coordinated, on a per launch basis. By contrast, the Part 87 flight test rules do not require additional formal coordination once an application has been granted. Given the complicated logistics entailed in a space launch operation, as well as changes in the operational environment on and around Federal ranges and other sites that are likely to occur over time, the Commission does not believe that a one-time coordination would be effective to cover all launches that occur during the term of an operator's license. At the same time, the Commission also wishes to avoid a coordination process that is overly burdensome for launch operators or that injects uncertainty as to spectrum access. The Commission requests that commenters propose solutions for this issue in their comments.

72. The Commission seeks comment on other coordination processes that are streamlined and efficient for space

launch entities yet are also adequately protective of Federal operations and consistent with the provisions of the Commission and NTIA's MOU. The Commission asks that commenters include detailed coordination procedures in their proposals, as well as the cost and benefits of the proposed process. The Commission notes that, given the importance in minimizing the potential for harmful interference to Federal and non-Federal uses alike in these bands, the Commission does not anticipate that coordination procedures would include a "shot clock"—*i.e.*, a provision that permits launch operators to move forward if review has not been completed by a certain date. The Commission seeks comment, however, on whether notification procedures could, under some circumstances or conditions, be sufficient to meet coordination requirements.

73. *Technical Rules for Space Launch Operations.* The Commission seeks comment on a proposed technical framework and on additional technical requirements for operations in the non-Federal allocations in the 2200–2290 MHz band and for operations in the proposed non-Federal allocations in the 420–430 MHz, 2025–2110, and 5650–5925 MHz bands. The Commission seeks to develop a technical framework and requirements that can address the unique needs of the commercial space sector.

74. The Commission's goal in establishing a technical framework for commercial space launch operations is to develop rules that support the evolving interests and requirements of commercial space entities while minimizing harmful interference between Federal and non-Federal operations. The Commission finds that the current framework that applies to Federal operators offers a predictable and tested model that promotes the efficient use of spectrum while minimizing interference among users in these bands. The Commission therefore proposes to adopt a similar set of technical rules to non-Federal space launch operations in the newly allocated 2200–2290 MHz band as well as in the proposed allocations. The Commission finds that adopting a technical framework similar to that which currently applies to Federal operations will promote interoperability and allow commercial launch providers to benefit from the economies of scale inherent from using the same radio systems for both Federal agencies and commercial customers.

75. In the 2013 *Notice of Proposed Rulemaking*, the Commission sought comment generally on how to support

the anticipated growth of the commercial space launch industry. The Commission asked whether providing non-Federal access to this spectrum would allow commercial space launch operators to incur lower development costs because they would be able to use the same communications systems for both Federal and non-Federal launches.

76. Several commenters support allocations and service rules that promote interoperability between Federal and commercial systems. For example, New Mexico Spaceport Authority (NMSA) maintains that interoperability between ranges avoids increased costs for development, hardware acquisition, operations, and testing; saves on opportunity costs; increases competition among launch providers and launch sites; and promotes the industry overall.

77. The Commission seeks comment on its proposal to model a technical framework on rules applicable to Federal launch operations. The Commission discusses below, as examples of this approach, certain technical requirements set forth in NTIA rules or ITU Radio Regulations and seeks comment on whether to apply similar rules to the 2200–2290 MHz band, as well as the proposed 420–430 MHz, 2025–2110 MHz, and 5650–5925 MHz allocations. The Commission seeks comment on other technical requirements that apply to Federal space launch operations in the relevant bands, such as any requirements regarding frequency tolerance, emissions classifications, or emissions levels, the benefits and costs of such requirements, whether the Commission should apply these requirements to non-Federal operations, and any additional technical rules needed to achieve its goals. For example, Table 5.2.1 of the NTIA Manual specifies frequency tolerance standards for aeronautical, space, and radiolocation stations in the frequencies at issue in this proceeding among others. The Commission seeks comment on adopting these or alternative frequency tolerance standards.

78. *2200–2290 MHz.* The 2200–2290 MHz band typically is used, in non-Federal space launch operations, for sending telemetry data from the launch vehicle to ground controllers. NTIA explains that Federal operations in the band primarily consist of tracking, telemetry, and control data communications for control of spacecraft. The band is used by Federal agencies in space operation, space research and Earth exploration-satellite service (space-to-Earth) for communications with earth stations and

return links via TDRSS (space-to-space), which provides links between low earth orbiting spacecraft and earth stations. Federal agencies and the military also use this band for terrestrial telemetry operations for aircraft, missile flight testing, land and maritime mobile communications, and fixed point-to-point microwave relay communications.

79. As discussed above, the Commission has adopted a Space Operation allocation for the 2200–2290 MHz band and is also seeking comment on adopting a Mobile allocation in this band. As space launch operations in this band may potentially operate under this dual regulatory approach, the Commission seeks comment on technical requirements under both a space operations and aeronautical mobile allocation, including whether these technical rules align with NTIA's requirements for both Federal and non-Federal space operations and how the Commission might promote consistency between and among the various, similarly situated services authorized in the band.

80. *Emission mask.* Under NTIA's space operations requirements, earth and space stations in the space operations service above 470 MHz must comply with the emissions mask standard established in section 5.6.2 of the NTIA Manual. Section 5.6.2 provides that for frequencies offset from the assigned frequency less than the 50 percent of the necessary bandwidth, no attenuation is required. At a frequency offset equal to 50 percent of the necessary bandwidth, an attenuation of at least 8 dB is required. Frequencies offset more than 50 percent of the necessary bandwidth should be attenuated in accordance with a specified formula dependent on necessary bandwidth and frequency displaced from the center of the emission bandwidth.

81. Section 5.3.9 of the NTIA Manual provides that aeronautical telemetry operation in the 2200–2290 MHz band must meet the emissions limits from Chapter 2 of the Inter-Range Instrumentation Group (IRIG) Standard 106–15, Part 1. Chapter 2 of IRIG Standard 106–15, Part 1 (hereinafter IRIG Standard 106–15), in turn, includes the following aeronautical telemetry spectral mask: All spectral components larger than  $-[55 + 10 \times \log(P)]$  dBc (*i.e.*, larger than  $-25$  dBm) at the transmitter output must be within the spectral mask calculated using the following equation:

$$M(f) = K + 90 \log(R) - 100 \log |f - fc|; |f - fc| \geq R/m$$

Where:

$M(f)$  = power (dBc) at frequency  $f$  (MHz)

$K$  =  $-20$  for analog signals

$K$  =  $-28$  for binary signals

$K$  =  $-61$  for FQPSK–B, FQPSK–JR, SOQPSK–TG

$K$  =  $-73$  for ARTM CPM

$fc$  = transmitter center frequency (MHz)

$R$  = bit rate (Mbps) for digital signals or  $(\Delta f + f_{max})$ (MHz) for analog FM signals

$M$  = number of states in modulating signal ( $m = 2$  for binary signals,  $m = 4$  for quaternary signals and analog signals)

$\Delta f$  = peak deviation

$f_{max}$  = maximum modulation frequency

82. While the Commission seeks to align the technical parameters used by Federal and non-Federal operations to facilitate interoperability, it also seeks to introduce measures that will help licensees to simplify or streamline operations, while ensuring that other users in the band are protected. To that end, the Commission requests comment on the utility of using one specific mask for all non-Federal operations in the band as an alternative to NTIA's dual emissions mask approach. For example, the Commission seeks comment on applying the space operations emissions mask described above at all stages of flight, or whether alternatively the emission limits for space stations found in Part 25 should be applied. As another alternative, the Commission seeks comment on the use of the emission mask described in part 87 of the Commission's rules: (1) On any frequency removed from the assigned frequency by more than 50 percent, up to and including 100 percent of the authorized bandwidth, at least 25 decibels attenuation; (2) on any frequency removed from the assigned frequency by more than 100 percent, up to and including 250 percent of the authorized bandwidth, at least 35 decibels attenuation; and (3) on any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth, at least  $43 + 10 \log(pY)$  decibels or 80 decibels, whichever is the lesser attenuation. The Commission seeks comment on these emission masks and whether such masks are appropriate notwithstanding our goal of promoting interoperability. Alternatively, the Commission seeks comment on whether to follow the NTIA approach of applying the aeronautical telemetry and space operations emission masks referenced by the NTIA Manual to first-stage and subsequent telemetry operations in the band, respectively, or any other alternatives.

83. *Power limits.* The RCC's IRIG Standard 106–15 that NTIA applies to aeronautical telemetry in the 2200–2290 MHz band provides that the EIRP of a transmitter shall not exceed 25 watts and that the output power shall not

exceed 25 watts. NTIA's space operations requirements, in contrast, do not impose a power limit, and instead rely on a power flux-density limit. Consistent with the Federal requirements, the Commission seeks comment on whether to limit first-stage operations to an effective radiated power of 25 watts and a transmitter output power of up to 25 watts, and below, the Commission seeks comment on whether to apply a power flux-density limit on operations after the first stage. Alternatively, if the Commission adopts a power flux-density limit in the band, the Commission seeks comment on whether no further limit on power is necessary, or whether it should adopt an alternative to the power limit in IRIG Standard 106–15.

**84. Power flux-density limits applicable to second-stage operations.** The ITU Radio Regulations establish power flux-density limits at the surface of the Earth from space research, space operation and Earth exploration-satellite services in the 2025–2110 MHz and 2200–2290 MHz bands in order to protect the fixed and mobile services in those bands. These limits are reflected in section 8.2.36 of the NTIA Manual. The Commission seeks comment above on potentially treating commercial space operations in the band under both a mobile service and space operation service allocation framework. If the Commission adopts this approach, what should be the boundary between these regulatory frameworks for purposes of applying the ITU power-flux density limits? Should the ITU power flux-density limits apply when the launch vehicle is above a specified altitude, at a certain time after launch, at a particular stage of operation, or based on some other fashion on launch operations in the band? For example, the power flux-density limits could apply after 15 minutes of flight, or alternatively, could apply to either the second or subsequent stage of the launch vehicles operation. Would applying the power-flux density limit above a certain altitude better accommodate reentry operations as well? To the extent NTIA requires space launch operations to meet the PFD limit, at what stage of the launch (or at what demarcation point) does NTIA require compliance with the limit? Should the Commission adopt a parallel requirement in its technical rules? The Commission further seeks comment on whether, aside from the interest in harmonization, it should impose the power flux-density limit on operations in the 2200–2290 MHz band in a reference bandwidth of 1 megahertz

instead of 4 kilohertz, consistent with Recommendation ITU–R SA.1273.

**85. 420–430 MHz.** As noted, the 420–430 MHz band typically is used for sending flight termination commands from ground control to the launch vehicle, if necessary, during launch. Non-Federal entities may obtain access to this band through STAs. NTIA explains that the band is also used by the military and other Federal agencies for a number of important radar applications, multi-function position-location communications systems, and test range telecommand and flight termination systems, making the band essential to national security.

**86.** The Commission recognizes that several commercial space launch entities have migrated or are in the process of migrating the flight termination signal from transmission of a signal from the ground station to launch vehicle to an automated function within the launch vehicles via onboard systems (*i.e.*, the flight termination sequence is now initiated from onboard the launch vehicle). Moreover, launches to date have occurred at Federal ranges, so access to this band by commercial launch providers has not been necessary. However, the Commission expects this to change as companies transition towards using commercial launch sites in the future. Therefore, adopting technical rules for commercial flight termination functions in the 420–430 MHz band is critical for ensuring the public is protected during space launches. To facilitate seamless operation with respect to Federal and non-Federal operations, the Commission seeks comment on whether to apply the same technical specifications for flight termination used by Federal space launches to non-Federal operations. For example, below, the Commission seeks comment on applying NTIA rules regarding emission mask and power limits.

**87. Emission mask.** NTIA requires land/mobile stations in the 420–430 MHz band to meet the standard established in section 5.2.2.2. This section requires that the mean power of any emission supplied to the antenna transmission line, as compared with the mean power of the fundamental, must be in accordance with the following: (a) On any frequency removed from the assigned frequency by more than 75 percent, up to and including 150 percent, of the authorized bandwidth, at least 25 decibels attenuation; (b) on any frequency removed from the assigned frequency by more than 150 percent, up to and including 300 percent, of the authorized bandwidth, at least 35 decibels attenuation; and (c) on any

frequency removed from the assigned frequency by more than 300 percent of the authorized bandwidth, two levels of attenuation depending on whether the transmitter operates with mean power of (1) less than 5 kilowatts or (2) 5 kilowatts or greater.

**88.** To facilitate similar treatment among non-Federal and Federal launches, the Commission proposes to apply an emission mask similar to section 5.2.2.2 to commercial launch operators using the 420–430 MHz band for flight termination purposes. The Commission seeks comment on the proposed emission mask. The Commission requests comment on alternative limits, and on the need for an emission mask generally for the transmission of this singular function.

**89. Power limits.** NTIA permits a maximum power limit of 1 kW of transmit power for range safety operations in the 420–450 MHz bands, which include flight termination operations such as self-destruct commands. Requests for additional power must be coordinated with and agreed to by the Commission. Range safety operations at three specific locations—Vandenberg AFB, CA; White Sands Missile Range, NM; and Cape Canaveral AFS, FL—may be authorized up to 10 kW transmit power without Commission coordination.

**90.** The Commission aims to provide flexibility to space launch operators using this band, but the Commission recognizes that limits are particularly necessary in this band, given that the intended use of this band is for safety-of-life applications. Consistent with the NTIA requirements, and with NTIA's stated preference for non-Federal launch operations in the band, the Commission proposes to permit an effective radiated power of up to 1000 watts by non-Federal launch providers. The Commission seeks comment on whether the proposed limits are sufficient to provide both the flexibility and the protection necessary to this safety-of-life application. The Commission also seeks comment on whether to consider alternative limits.

**91. 2025–2110 MHz.** The 2025–2110 MHz band supports fixed and mobile services on a primary basis for non-Federal terrestrial use. The band is allocated to BAS and LTTS for fixed and mobile use and to CARS for mobile use only. Federal operations include communications with satellites or other space stations, as well as between satellites or spacecraft, occurring under primary allocations for space operations (Earth-to-space) (space-to-space), space research (Earth-to-space) (space-to-space), or Earth exploration-satellite



service (Earth-to-space) (space-to-space). Federal agencies operate earth stations in this band for tracking and command of manned and unmanned Earth-orbiting satellites and space vehicles either for Earth-to-space links for satellites in all types of orbits or through space-to-space links using TDRSS. In addition, the National Oceanic and Atmospheric Administration (NOAA) operates earth stations in this band to control the Geostationary Operational Environmental Satellite (GOES) and Polar Operational Environmental Satellite (POES) meteorological satellite systems. To facilitate the relocation of military operations from the 2155–2180 MHz band, the 2025–2110 MHz band also includes a primary Federal allocation for fixed and mobile services, restricted to use by the military services and subject to certain provisions codified in footnote US92 of the U.S. Table.

92. *Emission mask.* The most analogous authorized Federal operation in the 2025–2110 MHz band is earth station telecommand transmissions to spacecraft, which operate under space operations rules. As discussed above, NTIA requires that earth and space stations in the space operations service above 470 MHz comply with the emissions mask standards established in section 5.6.2 of the NTIA Manual. Section 5.6.2 provides that for frequencies offset from the assigned frequency less than the 50 percent of the necessary bandwidth, no attenuation is required. At a frequency offset equal to 50 percent of the necessary bandwidth, an attenuation of at least 8 dB is required. Frequencies offset more than 50 percent of the necessary bandwidth should be attenuated in accordance with a specified formula dependent on necessary bandwidth and frequency displaced from the center of the emission bandwidth.

93. Consistent with the Commission's general approach, the Commission proposes to adopt the NTIA's emissions mask described above for commercial space launch transmissions in the 2025–2110 MHz band, except that the Commission proposes to apply attenuation requirements to the licensee's assigned frequencies rather than requiring a separate calculation of necessary bandwidth. The Commission seeks comment on this proposal, and on whether the Commission should adopt an alternative emissions mask.

94. *Power limits.* NTIA requires that the EIRP transmitted in any direction towards the horizon by a Federal earth station in bands between 1 GHz and 15 GHz that are shared with stations in the fixed or mobile service, which includes

the 2025–2110 MHz band, shall not (with limited exceptions) exceed the following limits:

- +40 dBW in any 4 kHz band for  $\theta \leq 0^\circ$
- +40+3 $\theta$  dBW in any 4 kHz band for  $0^\circ < \theta \leq 5^\circ$

where  $\theta$  is the angle of elevation of the horizon viewed from the center of radiation of the antenna of the earth station and measured in degrees as positive above the horizontal plane and negative below it.

95. Consistent with the Commission's general approach, the Commission proposes to adopt the NTIA's limit on maximum transmitted EIRP for commercial space launch transmissions in the 2025–2110 MHz band. The Commission seeks comment on this proposal, and on whether the Commission should adopt an alternative maximum power limit.

96. *5650–5925 MHz.* The 5650–5925 MHz band supports launch vehicle radar tracking. As noted, tracking of a launch vehicle typically involves use of a transponder that is placed on the launch vehicle. The transponder transmits a radar signal that is received at a ground-based tracking station. The radar signal provides ground controllers with more precise and accurate tracking information for the launch vehicle. NTIA explains that the Department of Defense (DoD) uses this band for a wide variety of radar applications, including anti-air warfare radars, which are part of an advanced ground-based air defense missile system. DoD and NASA also use this band for a variety of land-based and shipborne radars. The 5650–5925 MHz band also supports daily DoD and Department of Homeland Security (DHS) unmanned aircraft systems (UAS) missions.

97. Section 5.5 of the NTIA Manual contains the technical rules for Federal radar operations in the 5650–5925 MHz band. Section 5.5 provides five classifications of radar (Criteria A through E) incorporating NTIA's Radar Spectrum Engineering Criteria (RSEC). The RSEC establishes the technical standards for Federal radar use. Operations in the 5650–5925 MHz band are governed by RSEC Criteria A, RSEC Criteria B, or RSEC Criteria C, depending on the system characteristics and peak operating power of the radar system. RSEC Criteria A radars include radars with the following system characteristics: (1) Non-pulsed radars of 40 watts or less rated average power; (2) pulsed radars of 1 kW or less rated peak power; (3) radars with an operating frequency above 40 GHz; and (4) expendable, non-recoverable radars on

missiles. Criteria B applies if the radar system operates with a peak power over 1000 Watts and less than 100 kW.

Criteria C applies if the system operates with less than 1000 Watts. The NTIA Manual also includes receiver standards.

98. *Emission mask.* To facilitate the interoperable use of tracking radar equipment, the Commission proposes that Commission licensees that plan to utilize the 5650–5925 MHz band for launch vehicle tracking will need to comply with the applicable RSEC requirements in the NTIA Manual. The NTIA Manual provides emission masks for RSEC Criteria A, RSEC Criteria B, and RSEC Criteria C. The Commission proposes to incorporate the emission masks listed in the NTIA Manual. The Commission seeks comment on this proposal and also request the submission of any alternative emission masks that may be applicable for operations in the band.

99. *Power limits.* While NTIA requires radar operations to meet RSEC technical requirements, neither the RSEC requirements nor ITU Radio Regulations establish a specific power limitation for emissions inside the assigned bandwidth for radar operations in the 5650–5925 MHz band. However, the Commission notes that an ITU Recommendation, ITU-R M.1638–1, provides characteristics and sharing studies for certain radiolocation uses in the 5250–5850 MHz band that may be of use in helping to establish appropriate technical standards for radar tracking operations in the 5650–5925 MHz band. The Commission seeks comment on whether it is appropriate to derive power limits for operations in the 5650–5925 MHz band using parameters described in Recommendation ITU-R M.1638–1, specifically those found in Annex 1, Table 2, of the recommendation. The Commission seeks comment on appropriate limit(s) identified in the recommendation as well as alternative power levels.

100. *Accommodation of other services.* The Commission sought comment above on potential restrictions to the non-Federal radiolocation allocation in the 5650–5925 MHz band to enable coexistence with other operations in portions of this band. These other operations include the Intelligent Transportation Systems that operate in 5895–5925 MHz, U–NII devices that operate in 5650–5895 MHz, and fixed-satellite service uplinks that operate in 5850–5925 MHz. The Commission seeks comment on whether to adopt requirements or restrictions in the service rules for the radiolocation service to facilitate coexistence with



these other operations. These may include, for example, limiting the portions of the band and/or locations where radiolocation operations may be conducted, restricting use of the radiolocation service only to transponders attached to launch vehicles, requiring coordination with these other operations, or limiting the power that radiolocation stations may transmit in the direction of the geostationary arc.

101. *2360–2395 MHz.* As noted in the NPRM, three frequencies in the 2360–2395 MHz band are available for both Federal and non-Federal telemetry and telecommand use for launch and reentry vehicles. This band is currently regulated under Subpart J of the Commission's Part 87 rules. As discussed in Section IV.B, one proposal is to create a separate subpart under the Part 87 rules for the commercial space launch operations under the non-Federal space operations allocation the Commission adopts today for the 2200–2290 MHz band. The Commission seeks comment on whether to administer the 2360–2395 MHz space launch use under this new subpart or whether to retain the Subpart J designation. If the Commission administers the 2360–2395 MHz space launch use under the new subpart, should it apply the licensing scheme set forth under the new subpart or the existing licensing framework provided under the current Subpart J flight testing rules? In that event, should the Commission continue to apply the technical rules currently applicable to these services? Moreover, if the Commission continue to apply the Subpart J rules to the 2360–2395 MHz frequencies that may be used for space launch operations, should the Commission eliminate or amend any requirements under that subpart, including technical requirements such as power and emission limits, in light of other rule changes it proposes to adopt today? The Commission also notes that space launch telemetry and telecommand operations in the 2360–2395 MHz band occur under a Mobile allocation. In contrast, the Commission has adopted a Space Operation allocation for space launch telemetry operations in the 2200–2290 MHz band, while seeking comment on whether to add a Mobile allocation, and proposes to adopt a Space Operation allocation for space launch telecommand operations in the 2025–2110 MHz band. The Commission seeks comment on whether, to facilitate any changes it should make to the 2360–2395 MHz band space launch rules, it should add a primary Space Operation allocation to

the band, limited to launch vehicle telemetry and associated telecommand operations, subject to the same restrictions as apply to such operations under the Mobile allocation as specified in footnote US276 of the U.S. Table.

102. While there has been substantial development of equipment for commercial space launches operating in the 2200–2290 MHz band, the Commission has very limited information on the state of commercial space launch equipment operating in the 2360–2395 MHz band. Accordingly, the Commission seeks comment on the current state of equipment development for commercial space launch purposes in the band. The Commission seeks comment on whether any such equipment that has equipment authorization now or is currently in development should be grandfathered from any rule changes it adopts for the 2360–2395 MHz band.

103. *Equipment Authorization.* Radio Frequency (RF) devices are required to be properly authorized under 47 CFR part 2 prior to being marketed or imported into the United States. Equipment that contains an RF device must be authorized in accordance with the appropriate procedures specified in 47 CFR part 2, subpart J, with certain limited exceptions. These requirements not only minimize the potential for harmful interference, but also ensure that the equipment complies with the rules that address other policy objectives—such as human RF exposure limits. The Commission has two different approval procedures for equipment authorization—Certification and Supplier's Declaration of Conformity (SDoC). The rule part governing the service under which the equipment operates may require that such equipment be authorized under SDoC or receive a grant of certification from a Telecommunication Certification Body. In some instances, a device may perform different functions under multiple rule parts, resulting in the device being subject to more than one type of approval procedure. Part 25, for example, requires equipment authorization for portable earth-station transceivers, *e.g.*, handsets, body-worn devices, antenna-in-keyboard notebook computers, as well as satellite digital audio radio service (SDARS) terrestrial repeaters and mobile-satellite service (MSS) ancillary terrestrial component (ATC) base stations and mobile transceivers. Part 87 generally requires certification for aviation services equipment, with limited exceptions such as flight test station transmitters for limited time periods. In the context of space launch operations, should the

Commission require Part 2 equipment authorization for the radio frequencies devices that are being used to provide space launch operations and if so, which procedure is appropriate? Are there any additional or alternative compliance requirements or authorization processes specified in any of our rule parts, including Part 25, Part 87, or Part 90, that may be appropriate for space launch radio frequency devices or would provide analogous models for authorizing such equipment? What should such rules, if any, look like? Commenters should discuss cost and benefits of any proposed equipment authorization process and how such a process would serve the public interest while ensuring the equipment complies with the technical rules applicable to space launch operations.

104. *Licensing and Operating Rules for Payload Activities.* Although the primary focus of this proceeding is on radio-frequency use by space launch vehicles, space launch operations include launches of satellites and other commercial payloads. Accordingly, the Commission also seeks comment on whether there are improvements to the licensing process that could facilitate more routine licensing for certain payload activities currently addressed through experimental licensing. Launch payloads vary, from traditional geostationary and small satellites, to cargo capsules destined for the ISS, including the SpaceX Crew Dragon capsule transporting human crew to the ISS. Although most commercial payload needs for radiofrequency are addressed through the satellite licensing provisions in Part 25 of the Commission's rules, there are some types of activities that are currently addressed through experimental licensing.

105. For example, involving some of the same frequency bands that are used for space launch activities, SpaceX's cargo and crew capsules utilize S-band frequencies. For links between the capsule and ground stations, SpaceX uses 2106 MHz (earth-to-space) and 2216 MHz (space-to-earth); SpaceX also uses 2203.2 MHz for links between the capsule and the ISS, 2028.78 MHz for links between the ISS and the capsule, 2287.5 MHz for links between the capsule and TDRSS, and 2106.4 MHz for TDRSS to the Capsule. In addition to SpaceX, another example is the Orbital Sciences Corporation, a Northrop Grumman Systems Corporation Affiliate, and its operations of the Cygnus spacecraft for transporting cargo to ISS, and deploying satellites. The Cygnus spacecraft has used 2287.5 MHz (space-to-Earth) as well as 2287.5 MHz

for links between the Cygnus spacecraft and TDRSS, and 2203.2 MHz for links between the Cygnus spacecraft and the ISS. The Commission seeks comment on how to establish frequency allocations and license processes to facilitate commercial space launch operations involving operations of payloads.

106. The Commission seeks comment on whether any changes to the Table of Frequency Allocations it is adopting or proposing herein for the 2025–2110 MHz and 2200–2290 MHz frequency bands are needed to provide for these payload communications. What are the spectrum requirements for such operations? Are there other frequency bands that the Commission should also consider for such uses? Recognizing that this use would also be subject to coordination with NTIA, are there additional technical provisions that would facilitate compatibility with existing Federal and other Non-Federal operations in these frequency bands?

107. In addition, the Commission seeks comment on whether such payload operations should be addressed in Part 25 of the Commission's rules. If so, as these newer commercial operations were not considered when many of the rules were first adopted, are there any modifications to the current Part 25 rules (*e.g.*, default rules, bond requirements, fees, etc.) that may facilitate licensing? Would a streamlined process along the lines of the recently adopted process for small satellites be appropriate for such operations? Are there other licensing models that can be better suited for the needs of these payload operations?

108. The Commission is also aware of at least one launch operator, Rocket Lab, which intends to operate a spacecraft, derived from a launch vehicle upper stage, which will remain in orbit and function as a payload, equipped with various radios and sensors designed for longer-term operations. One option to license such operation is to require the applicant to apply for both a launch operation license to cover the launch vehicle and a separate license for orbital insertion activities to cover subsequent payload activities, assuming the Commission decides to separate these activities and govern them under separate rule parts (*e.g.*, Part 87 for the launch activities and Part 25 for the payload activities). To that end, the Commission seeks comment on this proposal and on the point at which operations should be considered to have switched from launch vehicle operations to payload operations (*i.e.*, which operations should be covered by the Part 87 license and which by the Part 25 license). In addition, reentry

operations may be necessary for certain payload vehicles, especially those transporting human crew. The Commission seeks comment on whether there should be distinct regulatory framework for such commercial payload transportation as well as the appropriate authorization approach for such reentry operations. Finally, are there other approaches the Commission should consider for licensing the radiofrequency operations of such objects?

109. In this *FNPRM*, the Commission separates issues associated with the licensing of commercial space launch operations into space launch vehicle communications operations (including space launch vehicle reentry) and payload communications operations—due to their distinct communications operations and underlying missions. The Commission believes that the telemetry, tracking, and command functions associated with the vehicle launch phase of a space launch are more akin to terrestrial aeronautical mobile and radiolocation operations under Parts 87 and 90, respectively, while the payload stage and associated communications may be more aptly viewed as space operations. Further, the Commission anticipates that operators may have different spectrum needs or seek to address them in different ways. Given these differences, are there any advantages of establishing separate licensing for these activities? Would such an approach provide space launch operators with greater flexibility to seek spectrum tailored to their operations? That said, the Commission seeks comment on other alternatives, including whether it would be appropriate and serve the public interest to license all phases of a commercial space operation under one authorization. The Commission seeks comment on the costs and benefits of such an authorization, including the possible consequences of issuing a single license to cover all aspects of a commercial launch operation and the associated administrative burdens and benefits. For example, would consigning all necessary information under one authorization inadvertently complicate the application and licensing process given the disparate operations involved rather than streamlining or simplifying it? What are the procedural and legal challenges that the Commission needs to consider with such a licensing approach?

110. *Launch Vehicle-Satellite Communications*. While the new proposed licensing rules for space launch operations would support transmissions for TT&C between

commercial space launch vehicles and ground stations, the Commission also seeks comment on authorizing communications between space launch vehicles and other space stations, including satellites. In some instances, the Commission observes that radios designed for communications with the Globalstar or Iridium satellite systems, for example, have been used on space launch vehicles in order to utilize those systems for data relay, including for TT&C purposes. The Commission seeks comment on whether such operations should continue to be licensed on an experimental or otherwise case-by-case basis, or whether these types of operations could be authorized as part of one of the approaches to space launch vehicle licensing discussed in this *FNPRM*. If commenters support authorization for such uses on a regular basis, are any changes needed to the Table of Frequency Allocations to provide for such operations? Are there existing frameworks from which the Commission could draw to authorize space launch vehicle to satellite communications through a footnote to the domestic Table of Frequency Allocations and appropriate additions or revisions to Part 25? What additional technical provisions would be needed to ensure compatibility with existing systems and services? Commenters proposing any licensing approaches should also discuss costs and benefits of such approaches, including associated administrative burdens or benefits, and how their proposals would ensure the most efficient and effective use of the spectrum in the public interest. For example, the Commission seeks comment on whether any proposed licensing approach for such operations would streamline the licensing processes or complicate them, and on the procedural and legal challenges that the need to be considered with such an approach.

111. *Expanded Federal Use of the non-Federal FSS and MSS Bands*. Over the past few years, U.S. space policies have evolved to encourage the Federal Government to use commercial space-related systems to meet its satellite communications needs through commercial leasing, which can include investment in Federal earth stations. However, current rules do not protect Federal earth station investments when they are built to connect to commercial satellites. The FCC has collaborated with NTIA over many years on opportunities to provide greater parity between Federal and analogous non-Federal earth stations, recognizing that reliable satellite communications are

vital for Federal agencies to accomplish their missions.

112. Nearly eight years ago, the *NPRM* sought comment on this issue. Specifically, the *NPRM* sought comment on a proposal to add a co-primary Federal FSS or MSS allocation to several bands together with a footnote that limits primary Federal use of the bands to earth stations communicating with non-Federal space stations. Alternatively, and in lieu of adding the new Federal allocations, the *NPRM* also sought comment on a proposal to add a footnote to the Table of Allocations outlining certain circumstances under which Federal earth stations operating with non-Federal space stations would be entitled to interference protection. The bands under consideration at that time included a wide range of non-Federal FSS and MSS allocations. The *NPRM* also proposed that for either approach, Federal agencies could operate earth stations in motion (ESIMs) on an interference protected basis to the same extent as non-Federal licensees. Under those proposals, Federal agencies would be expected to comply with all of the Part 25 rules pertaining to ESIMs and with the footnotes to the Allocation Table regarding ESIMs.

113. In the *NPRM*, the Commission noted that reliable access to spectrum for commercial launch operations and for federal earth stations were “two separate, but closely related portions of the commercial space sector.” Moreover, the National Space Policy has long recognized both of these issues as vital to continued progress in space. However, while the Commission advances its proposals regarding commercial launch operations in the *Order*, it notes that the spectrum landscape in non-Federal FSS and MSS allocations has changed significantly in the time since the *NPRM* was adopted. Our *Spectrum Frontiers, 3.7 GHz Service, 6 GHz* proceedings, among others, have altered the underlying assumptions about current and expected future uses of many of the frequency bands that were discussed in the *NPRM* and the subsequent record. Some of the bands under consideration in the *NPRM* may no longer be appropriate candidates for expanded Federal FSS or MSS use given recent changes in the FCC’s licensing or technical rules for the band. Other bands, however, may support greater Federal use.

114. The Commission recognizes again the need for greater parity and certainty in the protections granted to communications between commercial satellites and Federal users. However, the Commission must give careful consideration to the *NPRM*’s proposals

based on the current state of the commercial satellite marketplace. Accordingly, the Commission seeks to refresh the record with respect to the *NPRM*, which sought comment on expanded Federal use of the 4.0–4.2 GHz, 5.925–6.425 GHz, 11.7–12.2 GHz, 13.75–14.5 GHz, 18.3–19.3 GHz, 19.7–20.2 GHz, 28.35–29.1 GHz, and 29.25–30 GHz frequency bands, among others. The Commission plans to move expeditiously in reviewing and acting on this new record.

115. Some of the bands raised in the *NPRM* may no longer be suitable for expanded federal use. In the *3.7 GHz Report and Order* the Commission established a new 3.7 GHz Service for terrestrial operations in the 3.7–3.98 GHz band and established a transition process for existing non-federal operators in the 3.7–4.2 GHz band. The transition process included protection criteria for existing registered incumbent operators that would continue to operate FSS earth stations in the 4.0–4.2 GHz portion of the band after the transition. At that time, the Commission also found that it would not be in the public interest to allow non-federal operators to register new protected earth stations in the 4.0–4.2 GHz band. Since that time, the Commission completed Auction 107 and announced winning bids totaling a record \$81.1 billion in gross bids. Similarly, the Commission recently adopted rules to permit greater use by unlicensed devices of the 5.925–6.425 GHz band, which is the uplink band paired with the 3.7–4.2 GHz downlink band. The Commission has proposed to further expand unlicensed use of this band. Do commenters agree with the Commission’s observation that, given the current status of these bands, they may not be suitable candidates for expanded federal use?

116. In the *NPRM*, the Commission noted that terrestrial services heavily use several segments of the extended Ku-band, including the 10.7–11.7 GHz and 12.7–13.25 GHz bands, and therefore the Commission, at the time, “[did] not anticipate that the [extended Ku-] band will be heavily used by Federal agencies.” Does this remain the case? Does the complexity of coordination between terrestrial and satellite users in these bands outweigh the benefits of expanding Federal users’ access to these frequencies? Are there other frequency bands included in the *NPRM* that should be considered further? Which of the two alternative *NPRM* proposals for providing Federal access to these bands—adopting a Federal allocation or providing Federal earth stations interference protection

through a footnote—is preferable? Are any additional modifications required to either set of proposals with respect to any relevant frequency bands, including whether to include a secondary allocation instead of a co-primary allocation or provide some other means of providing interference protection to Federal earth stations, communicating with non-Federal satellites? What process should the Commission, NTIA, and Federal agencies follow when coordinating Federal earth stations in the relevant bands to receive protection? Should the fact that the Commission has licensed non-geostationary satellite systems with large numbers of satellites in some of these bands since the *NPRM* was issued impact our decision? Is there a need for the Commission to address Federal access to satellite bands where its rules permit blanket licensing of earth stations, such as the Ku-band and Ka-band, as blanket licensing permits Federal agencies to access commercial satellite systems on what effectively amounts to an equal basis with Commission licensees? Finally, to the extent that certain parties may be concerned about how such proposals, if implemented, might inhibit future repurposing of these bands for other non-federal services, the Commission seeks comment on those concerns and ways to address them.

117. *Federal Space Stations in the 399.9–400.05 MHz MSS Band*. Currently, U.S. Table footnote US319 prevents Federal space stations from operating in the 399.9–400.05 MHz band even though there is a primary Federal MSS allocation for this band. At the request of NTIA, the *NPRM* proposed to permit Federal space stations (*i.e.*, satellites) to operate in this band. The Commission takes this opportunity to invite further comment on the *NPRM*’s proposal to modify footnote US319 to permit Federal space stations to operate in the 399.9–400.05 MHz band.

118. NTIA made this request to allow the 399.9–400.05 MHz band be used for a new satellite system that will assume some of the traffic currently handled by the Argos satellite system. Argos is a satellite system that was established by the French Space Agency, NASA, and the National Oceanic and Atmospheric Administration (NOAA). Argos is used for a large number of applications, such as monitoring the oceans at thousands of fixed and drifting buoys, tracking the movements of wildlife, relaying information by humanitarian agencies from remote areas, monitoring water resources, and tracking the locations of ships. According to NTIA, establishing a new satellite system in the 399.9–

400.05 MHz band would allow non-environmental applications to be removed from the Argos system which will result in lower interference, higher capacity, and improved reliability and service for both the environmental applications remaining on Argos and the non-environmental applications moved to the new system.

119. The Commission first made the 399.9–400.05 MHz band along with three other frequency bands available for MSS in 1993 to allow deployment of non-geosynchronous low Earth orbit (LEO) satellite systems, called “Little LEO” systems, to provide non-voice services such as data messaging and position determination. Although a Little LEO system had been deployed in other nearby frequency bands, at the time that the *NPRM* was adopted in 2013 no MSS applicants had requested access to the band. In 2019, the Commission’s International Bureau initiated a processing round for non-voice non-geostationary systems in this band as well as the 400.15–401 MHz band. Five applications were included in this processing round. The Commission’s International Bureau has granted market access for the 399.9–400.05 MHz band to two of these applicants while the other applications remain pending.

120. The only commenter to address the 399.9–400.05 MHz band in response to the *NPRM* was Bigelow Aerospace. Bigelow Aerospace suggested that the 399.9–400.05 MHz band be allocated for emergency audio/data and backup communications links for communications between manned space stations or spacecraft and earth stations. Bigelow Aerospace made this suggestion as part of a discussion of the future bandwidth needs of crewed space stations and spacecraft that included suggestions that numerous other bands be used for different communication purposes. Bigelow Aerospace did not address the merits of NTIA’s request to open up this band to Federal space stations.

121. The Commission seeks additional comment on the *NPRM*’s proposal to amend footnote US319 to permit Federal space stations in the 399.9–400.05 MHz band. As indicated by the number of applications the Commission has received to use the band for NVNG MSS operations, the interest in use of the band has significantly changed since the record was developed in response to the *NPRM*. Considering these changes, the Commission seeks to update the record on this issue and on whether modifying footnote US319 to permit Federal space stations to operate in the 399.9–400.05

MHz band would serve the public interest. Allocating spectrum for a new satellite system to supplement Argos may further the reliable provision of important services. However, any Federal satellites in this band will need to coexist with the non-Federal systems to also be deployed in the band. The Commission seeks comment on how this spectrum band can be shared by Federal systems without causing harmful interference to non-Federal systems, including those in the adjacent bands, and if coordination between the relevant systems can resolve any potential interference issues.

122. *Future Needs of the Commercial Space Industry.* In the Notice of Inquiry (*NOI*) accompanying the *NPRM*, the Commission launched an inquiry into the future spectrum requirements of the commercial space industry. The *NOI* sought comment broadly on what other spectrum needs may be important as the commercial space sector continues to develop, including the spectrum requirements for commercial spaceports, the communications needs for other portions of space missions after the launch, and the portions of the Commission’s rules that may need to be amended to keep pace with this rapidly changing industry. Therefore, the Commission seeks further comment on these issues and any additional information, data, and proposals that might be relevant to determine current and future spectrum and communications needs of the commercial space industry to facilitate innovations and the sustainability of space exploration and development.

#### Procedural Matters

123. *Ex Parte Presentations.* The proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other

filings in the proceeding, the presenter may provide citations to such data or arguments in 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 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.

124. *Comment Period and Filing Procedures.* 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).

- *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), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

- After COVID–19 restrictions are lifted, the Commission has established that hand-carried documents are to be filed at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701. This will be the only location where hand-carried paper filings for the Commission will be accepted.

125. *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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

126. *Initial Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix E of this *Further Notice of Proposed Rulemaking*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Further Notice of Proposed Rulemaking*, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Further Notice*

of *Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

127. *Paperwork Reduction Act Analysis*. This *Further Notice of Proposed Rulemaking* contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4)), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### Ordering Clauses

128. Accordingly, *It is ordered* that, pursuant to sections 1, 2, 4(i), 5(c), 301, 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 301, 303(c), 303(f), and 303(r), and § 1.411 of the Commission's rules, 47 CFR 1.411, this *Report and Order and Further Notice of Proposed Rulemaking is hereby adopted*.

129. *It is further ordered* that the amendments of part 2 of the Commission's rules, as set forth in Appendix A of the *Report and Order and Further Notice of Proposed Rulemaking*, are adopted, effective thirty (30) days after publication in the **Federal Register**.

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

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

Federal Communications Commission.

**Marlene Dortch**,  
Secretary.

#### List of Subjects

47 CFR Part 2

Communications equipment, Radio, Telecommunications.

47 CFR Part 87

Communications equipment, Radio.

47 CFR Part 90

Communications equipment, Radio, Telecommunications.

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2, 87, and 90 as follows:

#### PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended by:

■ a. Revising pages 26, 28, 36, 37, 43, and 44; and

■ b. In the list of United States (US) Footnotes:

■ i. Adding footnote US68;

■ ii. Revising footnote US96;

■ iii. Adding footnote US121; and

■ iv. Revising footnote US319.

The revisions and additions read as follows:

#### § 2.106 Table of Frequency Allocations.

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420-430 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271			420-450 RADIOLOCATION G2 G129	420-430 Amateur US270  US64 US68 US230 US269		Private Land Mobile (90) MedRadio (95) Amateur Radio (97)
430-432 AMATEUR RADIOLOCATION 5.271 5.274 5.275 5.276 5.277	430-432 RADIOLOCATION Amateur 5.271 5.276 5.277 5.278 5.279			430-450 Amateur US270		
432-438 AMATEUR RADIOLOCATION Earth exploration-satellite (active) 5.279A 5.138 5.271 5.276 5.277 5.280 5.281 5.282	432-438 RADIOLOCATION Amateur Earth exploration-satellite (active) 5.279A 5.271 5.276 5.277 5.278 5.279 5.281 5.282		5.286 US64 US68 US87 US230 US269 US270 US397 G8	5.282 5.286 US64 US87 US269 US397		Remote Pickup (74D) Low Power Auxiliary (74H) Private Land Mobile (90) MedRadio (95)
438-440 AMATEUR RADIOLOCATION 5.271 5.274 5.275 5.276 5.277 5.283	438-440 RADIOLOCATION Amateur 5.271 5.276 5.277 5.278 5.279			450-454  5.286 US64 US87		
440-450 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271 5.284 5.285 5.286	440-450 FIXED MOBILE 5.286AA		454-456  5.209 5.271 5.286A 5.286B 5.286C 5.286E		454-456 FIXED LAND MOBILE US64 NG32 NG112 NG148	
450-455 FIXED MOBILE 5.286AA	455-456 FIXED MOBILE 5.286AA MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	455-456 FIXED MOBILE 5.286AA 5.209 5.271 5.286A 5.286B 5.286C 5.286E	US64	455-456 LAND MOBILE  US64		Remote Pickup (74D) Low Power Auxiliary (74H) MedRadio (95)



1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile	5.289 5.341	5.341	5.341 US88	
1710-1930 FIXED MOBILE 5.384A 5.388A 5.388B				1710-1761  5.341 US91 US378 US385 1761-1780 SPACE OPERATION (Earth-to-space) G42 US91	1710-1780 FIXED MOBILE  5.341 US91 US378 US385	
1780-1850 FIXED MOBILE SPACE OPERATION (Earth-to-space) G42				1780-1850		
1850-2025				1850-2000 FIXED MOBILE		RF Devices (15) Personal Communications (24) Wireless Communications (27) Fixed Microwave (101)
5.149 5.341 5.385 5.386 5.387 5.388	1930-1970 FIXED MOBILE 5.388A 5.388B	1930-1970 FIXED MOBILE 5.388A 5.388B Mobile-satellite (Earth-to-space)	5.388	5.388		
1970-1980 FIXED MOBILE 5.388A 5.388B  5.388						
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F						
2010-2025 FIXED MOBILE 5.388A 5.388B	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	2010-2025 FIXED MOBILE 5.388A 5.388B	5.388	5.388 5.389C 5.389E	2000-2020 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	Satellite Communications (25) Wireless Communications (27)
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space)					2020-2025 FIXED MOBILE	
5.392				2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) FIXED MOBILE 5.391	2025-2110 SPACE OPERATION (Earth- to-space) (space-to-space) FIXED NG118 MOBILE 5.391	Satellite Communications (25) TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
				5.392 US90 US92 US222 US346 US347	5.392 US90 US92 US222 US346 US347	

Table of Frequency Allocations			2110-2483.5 MHz (UHF)		Page 37
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space)			2110-2120	2110-2120 FIXED MOBILE	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)
5.388			US252	US252	
2120-2170 FIXED MOBILE 5.388A 5.388B	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth) 5.388	2120-2170 FIXED MOBILE 5.388A 5.388B	2120-2200	2120-2180 FIXED MOBILE	
5.388	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)				
5.388 5.389C 5.389E		5.388			
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F				NG41 2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25) Wireless Communications (27)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)	2200-2290	
5.392			5.392 US303 US96	US96 US303	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)			2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE 5.384A Amateur Radiolocation	2300-2450 FIXED MOBILE 5.384A RADIOLOCATION Amateur		2300-2305 G122 2305-2310	2300-2305 Amateur 2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur	Amateur Radio (97) Wireless Communications (27) Amateur Radio (97)
			US97 G122	US97	

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Table of Frequency Allocations		5460-7145 MHz (SHF)		United States Table		FCC Rule Part(s)
International Table		United States Table		United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table		
5460-5470 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION 5.448D RADIONAVIGATION 5.449 SPACE RESEARCH (active)			5460-5470 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION 5.449 US65 SPACE RESEARCH (active)	5460-5470 RADIONAVIGATION 5.449 US65 Earth exploration-satellite (active) Radiolocation Space research (active)		Maritime (80) Aviation (87) Private Land Mobile (90)
5.448B			5.448B US49 G130	5.448B US49		
5470-5570 EARTH EXPLORATION-SATELLITE (active) MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION 5.450B MARITIME RADIONAVIGATION SPACE RESEARCH (active)			5470-5570 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 MARITIME RADIONAVIGATION US65 SPACE RESEARCH (active)	5470-5570 RADIOLOCATION MARITIME RADIONAVIGATION US65 Earth exploration-satellite (active) Space research (active)		RF Devices (15) Maritime (80) Private Land Mobile (90)
5.448B 5.450 5.451			5.448B US50 G131	US50		
5570-5650 MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION 5.450B MARITIME RADIONAVIGATION			5570-5600 RADIOLOCATION G56 MARITIME RADIONAVIGATION US65	5570-5600 RADIOLOCATION MARITIME RADIONAVIGATION US65		
			US50 G131	US50		
			5600-5650 METEOROLOGICAL AIDS RADIOLOCATION G56 MARITIME RADIONAVIGATION US65	5600-5650 METEOROLOGICAL AIDS RADIOLOCATION MARITIME RADIONAVIGATION US65		
5.450 5.451 5.452			5.452 US50 G131	5.452 US50		
5650-5725 MOBILE except aeronautical mobile 5.446A 5.450A RADIOLOCATION Amateur Space research (deep space)			5650-5925 RADIOLOCATION US121 G2	5650-5830 Amateur		RF Devices (15) ISM Equipment (18) Amateur Radio (97)
5.282 5.451 5.453 5.454 5.455						
5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur	5725-5830 RADIOLOCATION Amateur					
5.150 5.451 5.453 5.455		5.150 5.453 5.455		5.150 5.282 US121		
5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur Amateur-satellite (space-to-Earth)	5830-5850 RADIOLOCATION Amateur Amateur-satellite (space-to-Earth)			5830-5850 Amateur Amateur-satellite (space-to-Earth)		
5.150 5.451 5.453 5.455		5.150 5.453 5.455		5.150 US121		

5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Amateur Radiolocation	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Radiolocation		5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur	RF Devices (15) ISM Equipment (18) Private Land Mobile (90) Personal Radio (95) Amateur Radio (97)
5.150	5.150	5.150	5.150 US245	5.150 US121	
5925-6700 FIXED 5.457 FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B MOBILE 5.457C			5925-6425	5925-6425 FIXED FIXED-SATELLITE (Earth-to-space) NG457A	RF Devices (15) Satellite Communications (25) Fixed Microwave (101)
			6425-6525	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE	RF Devices (15) Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
			5.440 5.458	5.440 5.458	
			6525-6700	6525-6700 FIXED FIXED-SATELLITE (Earth-to-space)	RF Devices (15) Satellite Communications (25) Fixed Microwave (101)
5.149 5.440 5.458			5.458 US342	5.458 US342	
6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE			6700-7125	6700-6875 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441	
				5.458 5.458A 5.458B	
				6875-7025 FIXED NG118 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE NG171	RF Devices (15) Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78)
				5.458 5.458A 5.458B	
				7025-7075 FIXED NG118 FIXED-SATELLITE (Earth-to-space) NG172 MOBILE NG171	RF Devices (15) TV Broadcast Auxiliary (74F) Cable TV Relay (78)
5.458 5.458A 5.458B				5.458 5.458A 5.458B	
7075-7145 FIXED MOBILE				7075-7125 FIXED NG118 MOBILE NG171	
			5.458	5.458	
			7125-7145 FIXED	7125-7145	RF Devices (15)
5.458 5.459			5.458 G116	5.458	

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**United States (US) Footnotes**

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US68 The band 420–430 MHz is allocated to the aeronautical mobile service on a primary basis for non-Federal use. Non-Federal stations in the aeronautical mobile service shall be:

(a) Restricted to use for pre-launch testing of launch vehicles and sending flight termination signals to launch vehicles during launches; and

(b) Subject to coordination with NTIA prior to each launch.

\* \* \* \* \*

US96 The band 2200–2290 MHz is allocated to the space operation (space-to-Earth) and the mobile services on a secondary basis for non-Federal use. Non-Federal stations in the space operation and mobile services shall be:

(a) Restricted to use for pre-launch testing and space launch operations except as provided under US303; and

(b) Subject to coordination with NTIA prior to each launch.

\* \* \* \* \*

US121 The band 5650–5925 MHz is allocated to the radiolocation service on a primary basis for non-Federal use. Non-Federal stations in the radiolocation service shall be:

(a) Restricted to use for pre-launch testing and tracking launch vehicles; and

(b) Subject to coordination with NTIA prior to each launch.

\* \* \* \* \*

US319 In the bands 137–138 MHz, 148–149.9 MHz, 149.9–150.05 MHz, 400.15–401 MHz, 1610–1626.5 MHz, and 2483.5–2500 MHz, Federal stations in the mobile-satellite service shall be limited to earth stations operating with non-Federal space stations.

\* \* \* \* \*

**PART 87—AVIATION SERVICES**

■ 3. The authority citation for part 87 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 4. Add subpart U, consisting of §§ 87.601 through 87.606, to read as follows:

**Subpart U—Commercial Space Launch Stations**

Sec.

87.601 Scope of service.

87.602 Supplemental eligibility.

87.603 Frequencies.

**Technical Regulations Governing the Use of 420–430 MHz, 2025–2110 MHz, and 2200–2290 MHz Bands**

87.604 Frequency coordination.

87.605 Emission masks.

87.606 Power limits.

**Subpart U—Commercial Space Launch Stations****§ 87.601 Scope of service.**

Commercial space launch stations are restricted to the following uses:

(a) *420–430 MHz band.* The use of commercial space launch licenses in the 420–430 MHz band is restricted to the transmission of flight termination signals during pre-launch testing and launch operations.

(b) *2025–2110 MHz band.* The use of commercial space launch licenses in the 2025–2110 MHz band is restricted to telecommand uplink transmissions from the controllers on the ground to the launch vehicle.

(c) *2200–2290 MHz band.* The use of commercial space launch licenses in the 2200–2290 MHz band is restricted to the transmission of telemetry data from the launch vehicle to controllers on the ground.

**§ 87.602 Supplemental eligibility.**

(a) The following entities are eligible for commercial space launch licenses:

(1) An operator or manufacturer of commercial spacecraft or spacecraft components;

(2) A parent corporation or its subsidiary if either corporation is an operator or manufacturer of spacecraft or spacecraft components; or

(3) An educational institution or a person primarily engaged in the design, development, modification, and flight test evaluation of spacecraft or spacecraft components.

(b) Each application must include a certification sufficient to establish the applicant's eligibility under the criteria in paragraph (a) of this section.

**§ 87.603 Frequencies.**

Commercial space launch operations are conducted in the 420–430 MHz, 2025–2110 MHz, and 2200–2290 MHz bands on a co-equal basis with U.S. Government stations. Frequencies in the 420–430 MHz, 2025–2110 MHz, and 2200–2290 MHz bands are assigned for telemetry and telecommand operations of expendable and re-usable launch vehicles:

(a) *420–430 MHz.* Frequencies in the 420–430 MHz band are assigned on a shared basis for the transmission of flight termination signals during pre-launch testing and launch operations.

(b) *2025–2110 MHz.* Frequencies in the 2025–2110 MHz band are assigned on a shared basis for telecommand uplink transmissions from the controllers on the ground to the launch vehicle.

(c) *2200–2290 MHz.* Frequencies in the 2200–2290 MHz band are assigned on a shared basis for the transmission of telemetry data from the launch vehicle to controllers on the ground.

**Technical Regulations Governing the Use of 420–430 MHz, 2025–2110 MHz, and 2200–2290 MHz Bands****§ 87.604 Frequency coordination.**

(a)(1) Each application for a new station license, renewal, or modification of an existing license concerning commercial space launch frequencies, except as provided in paragraph (b) of this section, must be accompanied by a statement from a frequency advisory committee. The committee must comment on the frequencies requested or the proposed changes in the authorized station and the probable interference to existing stations. The committee must consider all stations operating on the frequencies requested or assigned within 320 km (200 mi) of the proposed area of operation and all prior coordinations and assignments on the proposed frequency(ies). The committee must also recommend frequencies resulting in the minimum interference. The committee must coordinate in writing all requests for frequencies or proposed operating changes with the responsible Government Area Frequency Coordinators listed in the NTIA “Manual of Regulations and Procedures for Federal Radio Frequency Management.” In addition, committee recommendations may include comments on other technical factors and may contain recommended restrictions which it believes should appear on the license.

(2) The frequency advisory committee must be organized to represent all persons who are eligible for non-Government space launch stations. A statement of the organization service area and composition of the committee must be submitted to the Commission for approval. The functions of any advisory committee are purely advisory to the applicant and the Commission, and its recommendations are not binding upon either the applicant or the Commission.

(b) These applications need not be accompanied by evidence of frequency coordination:

(1) Any application for modification not involving change in frequency(ies), power, emission, antenna height, antenna location, or area of operation.

(2) [Reserved]

**§ 87.605 Emission masks.**

(a) *420–430 MHz.* The mean power of any emission supplied to the antenna

transmission line, as compared with the mean power of the fundamental, in the 420–430 MHz band of the Commercial Space Launch Service must be in accordance with the following:

(1) On any frequency removed from the assigned frequency by more than 75 percent, up to and including 150 percent, of the authorized bandwidth, at least 25 decibels attenuation;

(2) On any frequency removed from the assigned frequency by more than 150 percent, up to and including 300 percent, of the authorized bandwidth, at least 35 decibels attenuation; and

(3) On any frequency removed from the assigned frequency by more than 300 percent of the authorized bandwidth, two levels of attenuation depending on whether the transmitter operates with mean power of:

- (i) Less than 5 kilowatts; or
- (ii) 5 kilowatts or greater.

(b) 2025–2110 MHz. For frequencies offset from the assigned frequency less than the 50 percent of the necessary bandwidth, no attenuation is required. At a frequency offset equal to 50 percent of the necessary bandwidth, an attenuation of at least 8 dB is required. Frequencies offset more than 50 percent of the necessary bandwidth shall be attenuated in accordance with a specified formula dependent on necessary bandwidth and frequency displaced from the center of the emission bandwidth.

(c) 2200–2290 MHz. All spectral components larger than  $-[55 + 10 \times \log(P)]$  dBc (i.e., larger than  $-25$  dBm) at the transmitter output must be within the spectral mask calculated using the following equation:

$$M(f) = K + 90 \log(R) - 100 \log |f - f_c| \text{ Eqn. A-9}$$

where

- M(f) = power (dBc) at frequency f (MHz)
- K =  $-20$  for analog signals
- K =  $-28$  for binary signals
- K =  $-61$  for FQPSK–B, FQPSK–JR, SOQPSK–TG
- K =  $-73$  for ARTM CPM
- $f_c$  = transmitter center frequency (MHz)
- R = bit rate (Mbps) for digital signals or  $(\Delta f + f_{max})$ (MHz) for analog FM signals
- M = number of states in modulating signal (m = 2 for binary signals, m = 4 for quaternary signals and analog signals)
- f = peak deviation
- $f_{max}$  = maximum modulation frequency

**§ 87.606 Power limits.**

(a) 420–430 MHz. The effective radiated power of a transmitter in the 420–430 MHz band of the Space Operation Service shall not exceed 1000 Watts.

(b) 2025–2110 MHz. The effective radiated power of a transmitter in the 2025–2110 MHz band of the Space Operation Service shall not (with limited exceptions) exceed the following limits:

- (i)  $+40$  dBW in any 4 kHz band for  $\theta \leq 0^\circ$
- (ii)  $+40 + 3\theta$  dBW in any 4 kHz band for  $0^\circ < \theta \leq 5^\circ$

where  $\theta$  is the angle of elevation of the horizon viewed from the center of radiation of the antenna of the earth station and measured in degrees as positive above the horizontal plane and negative below it.

(c) 2200–2290 MHz. The effective radiated power of a transmitter in the 2200–2290 MHz band of the Space Operation Service shall not exceed 25 Watts and the transmitter output power shall not exceed 25 Watts. In addition, the power flux-density at the Earth’s surface produced by emissions from a transmitter operating after the first stage for all conditions and for all methods of

modulation shall not exceed the following limits:

- $-154$  dB(W/m<sup>2</sup>) in any 4 kHz for angles of arrival less than  $5^\circ$  above the horizontal plane;
- $-154 + 0.5(\delta - 5)$  dB(W/m<sup>2</sup>) in any 4 kHz for angles of arrival  $\delta$  (degrees) between  $5^\circ$  and  $25^\circ$  above the horizontal plane;
- $-144$  dB(W/m<sup>2</sup>) in any 4 kHz for angles of arrival between  $25^\circ$  and  $90^\circ$  above the horizontal plane.

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

■ 5. The authority citation for part 90 continues to read as follows:

**Authority:** 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

■ 6. Section 90.103 is amended by adding:

- a. Paragraph (a)(4);
- b. An entry to the table in paragraph (b), under the center heading “Megahertz” in numerical order, for “5650 to 5925”; and
- c. Paragraph (c)(31).

The additions read as follows:

**§ 90.103 Radiolocation Service.**

\* \* \* \* \*

(a) \* \* \*

(4) An operator or manufacturer of commercial spacecraft or spacecraft components; a parent corporation or its subsidiary if either corporation is an operator or manufacturer of spacecraft or spacecraft components; or an educational institution or a person primarily engaged in the design, development, modification, and flight test evaluation of spacecraft or spacecraft components.

(b) \* \* \*

**RADIOLOCATION SERVICE FREQUENCY TABLE**

Frequency or band	Class of station(s)	Limitation
* * * * *		*
<b>Megahertz</b>		
* * * * *		*
5650 to 5925 .....	Radiolocation land or mobile .....	31
* * * * *		*

\* \* \* \* \*

(c) \* \* \*

(31) This frequency band is shared on a co-primary basis to Government Radiolocation Service. The use of commercial space launch licenses in the

5650–5925 MHz band is restricted to launch vehicle tracking operations with

signals originating from the launch vehicle

\* \* \* \* \*

[FR Doc. 2021–11063 Filed 6–9–21; 8:45 am]

**BILLING CODE 6712–01–P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R2-ES-2018-0021;  
FF09E21000 FXES1111090000 212]

RIN 1018-BD55

**Endangered and Threatened Wildlife and Plants; Designating Texas Hornshell Critical Habitat**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Texas hornshell (*Popenaias popeii*), a freshwater mussel, under the Endangered Species Act (Act). In total, the proposed critical habitat designation includes approximately 463.6 river miles (745.9 kilometers) in Eddy County, New Mexico, and in Culberson, Brewster, Terrell, Val Verde, Kinney, Maverick, and Webb Counties, Texas. If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat. The effect of this regulation is to designate critical habitat for the Texas hornshell under the Act. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat. We also are notifying the public that we have scheduled an informational meeting followed by a public hearing on the proposed rule.

**DATES:**

*Comment submission:* We will accept comments on this proposed rule or draft economic analysis that are received or postmarked on or before August 9, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date.

*Public informational meeting and public hearing:* We will hold a public informational session from 5:00 p.m. to 6:00 p.m., Mountain Time, followed by a public hearing from 6:30 p.m. to 8:30 p.m., Mountain Time, on June 29, 2021.

**ADDRESSES:**

*Comment submission:* You may submit comments on the proposed rule or draft economic analysis by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R2-ES-2018-0021 to find this proposed rule. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R2-ES-2018-0021; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

*Public informational meeting and public hearing:* The public informational meeting and the public hearing will be held virtually using the Zoom platform. See Public Hearing, below, for more information.

*Document availability:* The draft economic analysis is available at <https://www.fws.gov/southwest/es/TexasCoastal/>, at <http://www.regulations.gov> in Docket No. FWS-R2-ES-2018-0021, and at the Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at <https://www.fws.gov/southwest/es/TexasCoastal/>, at <http://www.regulations.gov> in Docket No. FWS-R2-ES-2018-0021, and at the Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Service website and field office set out above, and may also be included in the preamble of the final rule and/or at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Chuck Ardizzone, U.S. Fish and Wildlife Service, Texas Coastal Ecological Services Field Office, 17629 El Camino Real #211, Houston, TX 77058; by telephone 281-286-8282; or by facsimile 281-488-5882. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

*Why we need to publish a rule.* Under the Endangered Species Act, critical habitat must be designated, to the maximum extent prudent and determinable, for all species determined to be endangered or threatened. The Lists of Endangered and Threatened Wildlife and Plants are in title 50 of the

Code of Federal Regulations (CFR) in part 17 (50 CFR 17.11(h) for wildlife and 50 CFR 17.12(h) for plants).

Designations and revisions of critical habitat can only be completed by issuing a rule.

*What this document does.* This document proposes the designation of critical habitat for the Texas hornshell and announces the availability of the draft economic analysis. The Texas hornshell has been listed as an endangered species under the Act. This rule proposes designation of critical habitat necessary for the conservation of the species.

*The basis for our action.* Under the Endangered Species Act, any species that is determined to be a threatened or endangered species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Endangered Species Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data 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. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

*Supporting analyses.* We prepared an analysis of the economic impacts of the proposed critical habitat designation and hereby announce the availability of the draft economic analysis for public review and comment.

Our species status assessment report (SSA report) documents the results of the comprehensive biological status review for the Texas hornshell and provides an account of the species' overall viability through forecasting of the species' condition in the future (Service 2018, entire). Additionally, the SSA report contains our analysis of required habitat and the existing conditions of that habitat.

*Peer review.* We sought comments from independent specialists on the SSA report to ensure that our critical habitat proposal is based on scientifically sound data and analyses. We received feedback from four scientists with expertise in freshwater mussel biology, ecology, and genetics as peer review of the SSA report. The reviewers were generally supportive of



our approach and made suggestions and comments that strengthened our analysis. We incorporated these comments into the SSA report, which can be found at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2018-0021.

### Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including information to inform the following factors such that a designation of critical habitat may be determined to be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species’ habitat or range is not a threat to the species, or threats to the species’ habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(d) No areas meet the definition of critical habitat.

(2) Specific information on:

(a) The amount and distribution of Texas hornshell habitat;

(b) What areas that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments regarding:

(i) Whether occupied areas are inadequate for the conservation of the species; and,

(ii) Specific information that supports the determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and, contain at least one physical or biological feature essential to the conservation of the species.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Texas hornshell and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act, in particular for those covered by the Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (CCAA) for the Texas hornshell in the Black and Delaware Rivers in New Mexico and Texas.

(8) Whether any lands should be considered for exclusion under section 4(b)(2) of the Act for national security reasons, whether such exclusion is or is not appropriate, and whether the benefits of excluding any specific area outweigh the benefits of including that area as critical habitat and why.

(9) Whether lands owned by the Kickapoo Indian Reservation of Texas should be considered for exclusion under section 4(b)(2) of the Act, whether such exclusion is or is not appropriate, and whether the benefits of excluding any specific area outweigh the benefits of including that area as critical habitat and why.

(10) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic

analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(11) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

All comments submitted electronically via <http://www.regulations.gov> will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>.

### Previous Federal Actions

All previous Federal actions are described in the final rule listing the Texas hornshell as an endangered species under the Act published in the **Federal Register** on February 9, 2018 (83 FR 5720).

### Critical Habitat

#### Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as: An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) Which are

essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific areas, we focus on the specific features that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions

are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in findings that the action jeopardizes the continued existence of the species in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information

available at the time of these planning efforts calls for a different outcome.

#### Habitat Outside the United States

Within the identified geographical area occupied at the time of listing (see below, *Areas Occupied at the Time of Listing*), the habitat areas used by the species are in Texas, New Mexico, and Mexico. Because we do not designate as critical habitat areas outside the United States (50 CFR 424.12(g)), we did not examine areas on the Mexican side of the Rio Grande; the critical habitat extends only as far into the river as the United States' jurisdictional boundary, *i.e.*, to the middle of the river. However, conservation of habitat that meets the conditions described in this designation in Mexico may be important to recovery of the species.

#### Prudence Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

We did not identify any of the factors above to apply to the Texas hornshell. Therefore, we find designation of critical habitat is prudent for the species.

#### Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Texas hornshell is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

At the time of our August 10, 2016, proposed rule to list the species, we found that critical habitat was not determinable due to insufficient knowledge of the biological needs of the species. We have continued to review the available information related to the Texas hornshell and newly acquired information necessary to perform this assessment, and we reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. We examined collection reports and occupancy models for the Texas hornshell (Randklev *et al.* 2017, entire). Additionally, we prepared a draft economic analysis. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Texas hornshell.

#### Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define "physical or biological features essential to the conservation of the species" as the features that occur in specific areas and that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat

characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species.

The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

#### Space for Individual and Population Growth and for Normal Behavior

Most freshwater mussels, including Texas hornshell, are found in aggregations, called mussel beds, that vary in size from about 50 to greater than 5,000 square meters (m<sup>2</sup>), separated by stream reaches in which mussels are absent or rare (Vaughn 2012, p. 983). Texas hornshell larvae (called glochidia) are parasites that must attach to a host fish (generally river carpsucker (*Carpiodes carpio*), grey redbhorse (*Moxostoma congestum*), and red shiner (*Cyprinella lutrensis*)). A population of Texas hornshell incorporates more than one mussel bed; it is the collection of mussel beds within a stream reach between which infested host fish may travel, allowing for ebbs and flows in mussel bed density and abundance over time throughout the population's occupied reach. Therefore, resilient

Texas hornshell populations must occupy stream reaches long enough so that stochastic events that affect individual mussel beds do not eliminate the entire population. Repopulation by infested host fish from other mussel beds within the reach can allow the population to recover from these events. Longer stream reaches are more likely to support populations of Texas hornshell into the future than shorter stream reaches. Therefore, we determine that long stream reaches are an important component of a riverine system with habitat to support all life stages of Texas hornshell.

Texas hornshell need flowing water for survival. They are not found in lakes or in pools without flow, or in areas that are regularly dewatered. River reaches with continuous flow support all life stages of Texas hornshell, while those with little or no flow do not. Flow rates needed by the species will vary depending on river size, location, and substrate type.

Additionally, Texas hornshell occur in flow refuges such as crevices, undercut riverbanks, travertine shelves, and large boulders. These refuges must have seams of clay or other fine sediments within which the mussels may anchor, but not so much excess sediment that the mussels are smothered. Those areas with clean-swept substrate (substrate not covered in sediment) with seams of fine sediments in crevices are suitable Texas hornshell habitat, as well as habitat for their host fish.

#### Physiological Requirements: Water Quality Requirements

Freshwater mussels, as a group, are sensitive to changes in water quality parameters such as dissolved oxygen, salinity, ammonia, and pollutants. Habitats with appropriate levels of these parameters are considered suitable, while those habitats with levels outside of the appropriate ranges are considered less suitable. We have used information available for other species of freshwater mussels to inform the needs of Texas hornshell. Juvenile freshwater mussels are particularly susceptible to low dissolved oxygen levels. Juveniles will reduce feeding behavior when dissolved oxygen is between 2–4 milligrams per liter (mg/L), and mortality has been shown to occur at dissolved oxygen levels below 1.3 mg/L. Additionally, Texas hornshell will die at salinity levels of 7 parts per thousand (ppt) for more than several weeks (Lang 2001, pp. 10–11). Juvenile mussels of other species have been shown to experience complete mortality after 7 days at

salinity levels greater than 4 ppt (Blakeslee *et al.* 2013, p. 2851)

The release of pollutants into streams from point and nonpoint sources have immediate impacts on water quality conditions and may make environments unsuitable for habitation by mussels. Early life stages of freshwater mussels are some of the most sensitive organisms of all species to ammonia and copper (Naimo 1995, pp. 351–352; Augsperger *et al.* 2007, p. 2025). Additionally, sublethal effects of contaminants over time can result in reduced feeding efficiency, reduced growth, decreased reproduction, changes in enzyme activity, and behavioral changes to all mussel life stages. Even wastewater discharges with low ammonia levels have been shown to negatively affect mussel populations. Therefore, we determine that stream reaches with the following water quality parameters are suitable for Texas hornshell:

- Low salinity (less than 0.9 ppt)
- Low ammonia (less than 0.7 mg/L)
- Low levels of contaminants
- Dissolved oxygen levels within substrate greater than 1.3 mg/L.

#### Sites for Development of Offspring

As discussed above, Texas hornshell larvae are parasites that must attach to a host fish to develop into juvenile mussels. Texas hornshell primarily use river carpsucker, gray redhorse, and red shiner as hosts. The river carpsucker and red shiner are widespread throughout the Texas hornshell's occupied range (Hubbs 1990, pp. 90–91; Levine *et al.* 2012, p. 1857). The presence of these fish species, either singly or in combination, supports the life-history needs of the Texas hornshell.

#### Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Texas hornshell from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on February 9, 2018 (83 FR 5720), and the Species Status Assessment for the Texas Hornshell (Service 2018, entire). We have determined that the following physical or biological features are essential to the conservation of the Texas hornshell:

A riverine system with habitat to support all life stages of the Texas hornshell, which includes:

(a) Flowing water at rates high enough to support clean-swept substrate but not so high as to dislodge individuals;

(b) Crevices beneath boulders, shelves, and within undercut banks with seams of fine sediment;

(c) River carpsucker, red shiner, and gray redhorse present; and

(d) Water quality parameters within the following ranges:

(i) Salinity below 0.9 ppt;

(ii) Ammonia below 0.7 mg/L;

(iii) Low levels of contaminants; and

(iv) Dissolved oxygen levels within substrate greater than 1.3mg/L.

#### Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: Increased fine sediment, water quality impairment, loss of flowing water, and barriers to fish movement.

Management activities that could ameliorate these threats and protect the integrity of the stream ecosystem include restoring or maintaining the natural hydrology of the stream, removing livestock from Texas hornshell habitats, preventing chemical spills, and appropriately maintaining bridges and other stream crossings to limit sediment input.

#### Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species at the time of listing in February 2018.

The SSA report contains much of the information used to identify critical habitat for Texas hornshell, which includes existing State recovery plans, numerous survey reports on streams

throughout the species' range, and museum records of historical locations (Service 2018).

*Areas Occupied at the Time of Listing*

The proposed critical habitat designation does not include all streams known to have been occupied by the species historically; instead, it focuses on occupied streams within the historical range that have retained the necessary physical and biological features (PBFs) that will allow for the maintenance and expansion of existing populations. The following streams meet the definition of areas occupied by the species at the time of listing: Black River, Delaware River, Pecos River, Devils River, and Rio Grande. No developed areas occur within the proposed designation except for road crossings of streams, which do not remove the suitability of these areas for this species, because habitat is still present.

In summary, for areas proposed as critical habitat, we delineated critical habitat unit boundaries using the following criterion: Evaluate habitat suitability of stream segments within the geographic area occupied at the time of listing, and delineate those segments that contain some or all of the PBFs to support life-history functions essential for conservation of the species.

As a final step, we evaluated those occupied stream segments identified through the above analysis and refined the starting and ending points by evaluating the presence or absence of appropriate PBFs. We selected upstream and downstream cutoff points to omit areas that are highly degraded and are not likely to support the Texas hornshell. For example, permanently dewatered areas or areas in which there

was a change to unsuitable parameters (e.g., water quality, bedrock substrate) were used to mark the start or endpoint of a stream segment proposed for designation. Critical habitat stream segments were then mapped using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a Geographic Information Systems program.

The areas proposed for designation as critical habitat provide sufficient stream habitat for adult Texas hornshell, as well as for the habitat needs for juveniles and the fish species that serve as hosts for the Texas hornshell's parasitic larvae. In general, the PBFs of critical habitat are contained within the riverine ecosystem formed by the channel at bankfull stage. Texas hornshell use the riverine ecosystem for feeding, breeding, and sheltering.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Texas hornshell. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect

the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat river miles that we have determined were occupied at the time of listing and contain one or more of the physical or biological features that are essential to support life-history processes of the species.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <http://www.regulations.gov> at Docket No. FWS-R2-ES-2017-0030, on our internet site (<https://www.fws.gov/southwest/es/TexasCoastal/>), and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

**Proposed Critical Habitat Designation**

We are proposing to designate 463.6 mi (745.9 km) in five units as critical habitat for Texas hornshell. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Texas hornshell. The five areas we propose as critical habitat are: (1) Pecos Tributary Unit; (2) Pecos River Unit; (3) Devils River Unit; (4) Rio Grande—Lower Canyons Unit; and (5) Rio Grande—Laredo Unit. Table 1 shows the occupancy of the units, the land ownership, and approximate areas of the proposed designated areas for the Texas hornshell.

TABLE 1—OCCUPANCY, LAND OWNERSHIP, AND SIZE OF TEXAS HORNSHELL PROPOSED CRITICAL HABITAT UNITS AND SUBUNITS

[BLM = Bureau of Land Management; NGO = non-governmental organization]

Unit	Subunit	Occupancy at time of listing	Current occupancy	Riparian ownership	Area
1—Pecos Tributary	1a—Black River	Occupied	Occupied	Private	9.7 mi (15.6 km).
	1b—Delaware River	Occupied	Occupied	BLM, Private	31.1 mi (50.0 km).
2—Pecos River		Occupied	Occupied	Private, Federal, NGO.	85.7 mi (137.9 km).
3—Devils River		Occupied	Occupied	Federal, Private, NGO, State.	33.0 mi (53.1 km).
4—Rio Grande—Lower Canyons.	4a—Lower Canyons Reach.	Occupied	Occupied	Federal, State	66.7 mi (107.3 km).
	4b—Langtry Reach	Occupied	Occupied	Private, Federal	46.5 mi (74.8 km).
5—Rio Grande—Laredo.	5a—Eagle Pass Reach.	Occupied	Occupied	Private, City, Tribal	138.7 mi (223.2 km).
	5b—Laredo Reach	Occupied	Occupied	Private, City	52.2 mi (84.0 km).

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Texas hornshell, below.

#### *Unit 1: Pecos Tributary Unit*

*Subunit 1a: Black River:* Subunit 1a consists of 15.6 km (9.7 mi) in private ownership in Eddy County, New Mexico. The Texas hornshell occupies the entire stream in this subunit, and the subunit contains all of the PBFs essential to the conservation of Texas hornshell. The watershed of the Black River is characterized by rural ranching and farming, as well as oil and gas development. Diverted river water and groundwater are used for irrigation of farms and ranches as well as hydraulic fracturing by oil and gas development operations (Bren School of Environmental Management 2014, pp. 32, 130). Additionally, only a few roads cross the Black River at low-water crossings; therefore, traffic, including local and industrial, is concentrated in these areas. The relatively short length of this reach renders the population more susceptible to stochastic events. Consequently, special management may be necessary to ensure perennial flow in the river, prevent contaminant spills, and reduce livestock access to the river.

The Service has collaborated with water users, oil and gas developers, landowners, and other partners to develop a Candidate Conservation Agreement (CCA) and Candidate Conservation Agreements with Assurances (CCAAs) for the species on State, Federal, and private lands. The purpose of these agreements is to provide voluntary conservation that would reduce threats to the species while improving physical habitat and water quality. The key conservation measures in the agreements are designed to limit oil and gas development to areas outside of the Black and Delaware River floodplains, minimize erosion, and maintain minimum water flows in the rivers. Along with these measures, the partners to the agreement are evaluating alternatives to the multiple low water crossings on the Black River. Partners are considering alternate crossing locations that could include bridges designed to allow host fishes to pass through in addition to decreasing potential contamination events. We are considering excluding the subunit under section 4(b)(2) of the Act if these agreements are implemented in a manner sufficient to defray the need for additional special management.

*Subunit 1b: Delaware River:* Subunit 1b consists of 50.0 km (31.1 mi) of occupied habitat in the Delaware River

in Culberson County, Texas, and Eddy County, New Mexico. Texas hornshell were historically known from dead shells found within this subunit; the species was likely extirpated due to lack of water. Habitat improvements undertaken by the Bureau of Land Management (BLM) resulted in perennial flow through the rehabilitated section of the Delaware River (BLM 2005, p. 1). A total of 126 adult Texas hornshell were reintroduced to the river in New Mexico in 2014 and 2015. The reintroduced adults were recaptured alive and the females were gravid (brooding larvae) in 2016, indicating preliminary success. A spill of 11 barrels of oil and 18,000 barrels of water that has been collected as a byproduct of oil and gas production occurred upstream of the reintroduced individuals in August 2017; the effects of this spill and the subsequent flooding has resulted in only two of the reintroduced individuals still remaining in the Delaware River. The New Mexico Department of Game and Fish plan to continue their reintroduction efforts to ensure a diverse, reproducing population persists in the river; successful freshwater mussel reintroductions typically require multiple years of effort. Riparian ownership consists of the BLM and private landowners. The BLM helped restore perennial flow to the river through riparian management, and now the reach contains all of the PBFs essential to the conservation of Texas hornshell.

The Delaware River is included in the CCA/CAA described in Subunit 1a; therefore, we are considering it for exclusion under section 4(b)(2) of the Act.

#### *Unit 2: Pecos River Unit*

This unit consists of 137.9 km (85.7 mi) in private, non-governmental organization (NGO), and Federal ownership of the Pecos River in Val Verde and Terrell Counties, Texas. This unit is occupied. Three live Texas hornshell were collected from the Pecos River Unit in 2016, which, based on species survey efforts, indicates several other living Texas hornshell were likely in the unit at that time. In addition, the 2016 collection resulted in numerous shells of the Texas hornshell (Bosman *et al.* 2016, p. 6; Randklev *et al.* 2016, p. 9), which is further evidence that additional members of the species were in the Pecos River. The live specimens collected in 2016 were very old, but we have no indication that they were no longer occupying the Pecos River at the time of listing. The direct evidence of multiple living specimens of Texas

hornshell in the Pecos River as recently as 2016, along with the conclusion that other members of the species were likely present at that time, allows us to conclude that the Pecos River Unit was occupied at the time of listing. This unit contains some of the PBFs essential to the conservation of Texas hornshell, such as flowing water and adequate crevices, but salinity is relatively high in this unit, compromising water quality. Special management may be necessary to improve water quality in this reach.

#### *Unit 3: Devils River Unit*

This unit consists of 53.1 km (33.0 mi) of the Devils River in Val Verde County, Texas. Riparian lands are primarily in private ownership, including The Nature Conservancy (TNC), and both the Texas Parks and Wildlife Department (TPWD) and the Federal Government owns portions of these lands. Texas hornshell are historically known from the Devils River and currently occupy the unit. The Devils River represents a relatively intact watershed, with no dams, little development, and much of it under conservation management. Texas hornshell sites are located on Dolan Falls Preserve, which is 4,800 acres (ac) (1,943 hectares (ha)) owned by TNC, as well as an additional 13,722 ac (5,553 ha) managed under a conservation easement. TNC also owns Nix 2 Ranch (87,000 ac (35,209 ha)), and TPWD owns the Devils River State Natural Area (37,000 ac (15,000 ha)), resulting in conservation management of much of the land along the river (TNC 2004, p. 9; TPWD 2016, p. 1). The PBFs essential to the conservation of Texas hornshell are present in the Devils River. Special management may be necessary to maintain instream flows in the river.

#### *Unit 4: Rio Grande—Lower Canyons*

*Subunit 4a: Lower Canyons Reach:* This subunit consists of 107.3 km (66.7 mi) of occupied habitat on the U.S. side of the Rio Grande in Terrell and Brewster Counties, Texas. Most of this reach is part of the Rio Grande Wild and Scenic River, owned by the United States and managed by the National Park Service. A small portion of the subunit is owned by the State of Texas. The PBFs essential to the conservation of Texas hornshell are present in this subunit. It was designated a National Wild and Scenic River in 1978 (Garrett and Edwards 2004, p. 396), which affords some protection from Federal development projects, but does not limit State, local, or private development (National Wild and Scenic Rivers System 2016, p. 1). Special management

may be necessary to maintain instream flows in the river.

**Subunit 4b: Langtry Reach:** This subunit consists of 74.8 km (46.5 mi) of the U.S. side of the Rio Grande in Terrell and Val Verde Counties, Texas, most of which is also owned and managed by the National Park Service. A small portion of this subunit is in private ownership. This unit contains all of the PBFs and is connected to the known population of Texas hornshell in Subunit 4a, but the remote nature of this reach has prevented surveys. There are no instream structures in Subunit 4b that would impede water flow; the flow regime is the same as in Subunit 4a; and the host fish may move between the subunits freely. Based on this information, it is reasonable to conclude that the population in Subunit 4a is unlikely to stop at the most downstream survey location; therefore, we conclude this subunit is occupied.

However, due to the lack of recent surveys, we are analyzing this subunit against the second prong of the definition of critical habitat for unoccupied habitat out of an abundance of caution. If Subunit 4b is not, in fact, occupied, it would provide for needed growth and expansion of the species in this portion of its historical range. The longer the occupied reach, the more likely it is that the Texas hornshell population can withstand stochastic events such as extreme flooding, dewatering, or water contamination. Therefore, Subunit 4b is essential for the conservation of the species.

Like Subunit 4a, this subunit is part of the Rio Grande Wild and Scenic River, which affords some protection from Federal development projects, but does not limit State, local, or private development (National Wild and Scenic Rivers System 2016, p. 1). Special management may be necessary to maintain instream flows in the river.

#### **Unit 5: Rio Grande—Laredo**

**Subunit 5a: Eagle Pass Reach:** This subunit consists of 223.2 km (138.7 mi) of the U.S. side of the Rio Grande from Del Rio, Texas, to upstream of the Laredo population of Texas hornshell in Kinney and Maverick Counties, Texas. This subunit is primarily privately owned, with small portions owned by the City of Eagle Pass and the Kickapoo Tribe of Texas. We conclude that this reach was occupied at the time of listing. This conclusion is based on the collection of two live individuals near Del Rio between 2008 and 2011 (Karatajev *et al.* 2015, p. 8). The immobility of Texas hornshell and the continued presence of suitable habitat indicates the species remained in the

area at the time of listing. This reach includes all of the PBFs necessary to support the continued existence of the species. Additionally, the hydrological connection with Subunit 5b, which contains the largest known population of Texas hornshell, allows for host fish movement between the subunits.

However, due to the lack of recent records, we are analyzing this subunit against the second prong of the definition of critical habitat for unoccupied habitat out of an abundance of caution. If Subunit 5a is not occupied, it would provide for needed growth and expansion of the species in this portion of its historical range. The longer the occupied reach, the more likely it is that the Texas hornshell population can withstand stochastic events such as extreme flooding, dewatering, or water contamination. Therefore, Subunit 5a is essential for the conservation of the species.

The Rio Grande in this subunit is heavily influenced by development along the Texas-Mexico border, and the river has a high sediment load in this reach (Texas Clean Rivers Program 2013, p. 9). Flows are regulated by releases from Amistad Reservoir based on hydropower generation and water deliveries for downstream irrigation needs (Texas Water Development Board 2016, p. 1). Special management may be necessary to improve water quality and reduce sedimentation.

**Subunit 5b: Laredo Reach:** This subunit consists of 84.0 km (52.2 mi) of the U.S. side of the Rio Grande upstream of Laredo in Webb County, Texas, in private and city ownership. This subunit is occupied and contains the largest known Texas hornshell population (Randklev *et al.* 2015, p. 7). Like subunit 5a, this subunit is heavily influenced by development along the Texas-Mexico border, and rapid human population growth as well as industrialization on the Mexican side of the river has stressed the existing wastewater treatment facilities, and Rio Grande water quality is impaired as a result (Texas Clean Rivers Program 2013, p. 7). All of the PBFs essential to the conservation of Texas hornshell are found in this reach, although special management to improve water quality may be necessary.

#### **Effects of Critical Habitat Designation**

##### *Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened

species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR



402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinstate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

#### *Application of the "Adverse Modification" Standard*

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species. Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final

regulation that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would alter the existing flow regime. Such activities could include, but are not limited to, impoundment, water diversion, and water withdrawal. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of these mussels.

(2) Actions that would significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the mussels or their fish host and result in direct or cumulative adverse effects to these individuals and their life cycles.

(3) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of these mussels and their fish host by increasing the sediment deposition to levels that would adversely affect their ability to complete their life cycles.

#### **Exemptions**

##### *Application of Section 4(a)(3) of the Act*

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: "The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." There are no Department of Defense lands within the proposed critical habitat designation.

#### **Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction of adverse modification as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. In the case of the Texas hornshell, the benefits of critical habitat include public awareness of the presence of the Texas hornshell and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the Texas hornshell due to protection from destruction or adverse modification of critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation or the continuation, strengthening, or encouragement of partnerships. Continued implementation of an ongoing management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation

management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

### Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species.

The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.*, under the

Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.*, conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary section 4(b)(2) exclusion analysis.

For this particular designation, we developed an Incremental Effects Memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Texas hornshell (Industrial Economics, Inc. 2019).

We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.*, absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units that

are unoccupied by the species may require additional management or conservation efforts as a result of the critical habitat designation, thereby possibly incurring incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis of the proposed critical habitat designation for the Texas hornshell, and this analysis is summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation.

In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Texas hornshell, first we identified, in the IEM dated December 5, 2016, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (National Park Service, Bureau of Land Management); (2) roadway and bridge construction; (3) agriculture; (4) grazing; (5) groundwater pumping; (6) in-stream dams and diversions; (7) oil and gas production; and (8) border protection. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the ESA, designation of critical habitat affects only activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Texas hornshell is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Texas hornshell's critical habitat. The Texas hornshell has not been listed long enough for us to have conducted any section 7 consultations. It has been our experience that, for such species, it is more difficult to discern which conservation efforts are attributable to the species being listed and which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Texas hornshell would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Texas hornshell totals 463.6 mi (745.9 km) in five units, all of which were occupied at the time of listing. However, two subunits—4b and 5a (comprising 40 percent of the proposed critical habitat designation)—have few records of Texas hornshell and are so remote that we do not believe listing the species made the public aware of its presence in these areas. As a result, we do not expect section 7 consultations to be initiated in these areas until additional awareness is brought to these areas when they are designated as critical habitat. Therefore, while all units of the proposed critical habitat were occupied at the time of listing, we conducted an economic analysis that modeled Subunits 4b and 5a as unoccupied so that we could more accurately represent the anticipated increase in public awareness and cost of project modifications when these areas are designated as critical habitat. As a result, our economic effects analysis demonstrates the maximum economic effects of the critical habitat designation.

All other subunits (besides the two modeled as unoccupied) comprise 60 percent of the designation and were

modeled as occupied in the economic analysis. In these areas, any actions that may affect the species or its habitat would also affect designated critical habitat and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the Texas hornshell. Therefore, only administrative costs are expected in approximately 60 percent of the proposed critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, we believe that in most circumstances these costs would predominantly be administrative in nature and would not exceed \$89,000 in a single year.

The remaining subunits (185.2 mi (298.0 km), or 40 percent of the total proposed critical habitat designation) that were analyzed as unoccupied by the species for the purposes of the economic analysis are essential for the conservation of the species. In these areas, any conservation efforts or associated probable impacts would be considered incremental effects attributed to the critical habitat designation. Subunit 4b (Rio Grande–Lower Canyons, Langtry Reach) is very remote with little to no development, and activities that could affect the Texas hornshell or its habitat are not expected to occur in these areas. We do not anticipate any projects because of how remote Subunit 4b is, as well as the lack of historical, current, or planned activities in this area. Subunit 5a (Rio Grande–Laredo, Eagle Pass Reach) has potential for projects to occur; however, because this reach is upstream of occupied habitat, for large projects, project modifications requested to avoid adverse modification are likely to be the same as those that would be needed to avoid jeopardizing the species in downstream, occupied critical habitat. For small projects that may affect critical habitat in this reach, project modifications would be the same as conservation measures currently included in best management practices under Clean Water Act section 404 permits issued by the U.S. Army Corps of Engineers. Therefore, costs are unlikely to exceed \$100 million in any single year and would not be significant, based on the definition of significance in E.O. 12866.

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies

or municipalities. Activities we expect will be subject to consultations that may involve private entities as third parties are residential and commercial development that may occur on private lands. However, based on coordination efforts with State and local agencies, the cost to private entities within these sectors is expected to be relatively minor (administrative costs of less than \$10,000 per consultation effort) and would not be significant (exceed \$100 million in a single year).

The probable incremental economic impacts of the Texas hornshell critical habitat designation are expected to be limited to additional administrative effort as well as minor costs of conservation efforts resulting from a small number of future section 7 consultations. This is due to two factors: (1) In proposed critical habitat stream reaches that were analyzed as occupied by the species (60 percent), incremental economic impacts of critical habitat designation, other than administrative costs, are unlikely; and (2) in proposed areas that were analyzed as if they were unoccupied by the Texas hornshell (40 percent), few actions are anticipated that will result in section 7 consultation or associated project modifications. At approximately \$10,000 or less per consultation, in order to reach the threshold of \$100 million of incremental administrative impacts in a single year, critical habitat designation would have to result in more than 11,000 consultations in a single year. Thus, the annual administrative burden is unlikely to reach \$100 million.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

### Exclusions

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will evaluate whether certain lands are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical

habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

We are considering whether to exclude Unit 1: Pecos Tributary Unit under section 4(b)(2) of the Act from the final critical habitat designation for the Texas hornshell because of the conservation agreements discussed earlier in this document. The Service has collaborated with water users, oil and gas developers, landowners, and other partners to implement a CCA and CCAA for the Texas hornshell on State, Federal, and private lands in the Black and Delaware River watersheds. The key conservation measures in the agreements are designed to limit oil and gas development to areas outside of the Black and Delaware River floodplains, minimize erosion in order to maintain suitable substrate, and maintain minimum water flows in the rivers. Along with these measures, the partners to the agreement are evaluating alternatives to the multiple low water crossings on the Black River to reduce the potential for river contamination. Partners are considering alternate crossing locations that could include bridges designed to allow host fishes to pass through in addition to decreasing the risk of contamination events.

The Pecos Tributary Unit consists of two subunits, the Black River Subunit (9.7 mi (15.6 km)) and the Delaware River Subunit (31.1 mi (50.0 km)). A CCA and CCAA between the Service, BLM, New Mexico State Land Office, and Center of Excellence has been completed for the Black and Delaware Rivers in New Mexico and Texas. We are considering the exclusion of non-Federal lands covered by this plan that provide for the conservation of the Texas hornshell. We are requesting comments on the benefit to the Texas hornshell from the CCA/CCAA; however, at this time, we are not proposing to exclude any area within the proposed critical habitat for the Texas hornshell.

However, we specifically solicit comments on the inclusion or exclusion of the Pecos Tributary Unit.

Any other plans in development that are submitted to us will be evaluated and could result in the exclusion of additional proposed critical habitat units from the final designation.

#### *Exclusions Based on Economic Impacts*

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an analysis of the economic impacts of the proposed critical habitat designation and related

factors. Potential land use sectors that may be affected by the Texas hornshell critical habitat designation include water diversion, impoundment repairs, bridge and highway maintenance, oil and gas development, border protection, grazing, groundwater withdrawals, and agriculture.

During the development of a final designation, we will consider any additional economic impact information received through the public comment period, and as such areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

#### *Impacts on National Security and Homeland Security*

Section 4(a)(3)(B)(i) of the Act may not cover all Department of Defense (DoD) lands or areas that pose potential national-security concerns (e.g., a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of "critical habitat." Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns.

We cannot, however, automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, it must provide a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to

the probable incremental impact that could result from the designation. If the agency provides a reasonably specific justification, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

We are not considering or proposing any lands for exclusions based on national security impacts under section 4(b)(2) of the Act in this proposed critical habitat rule. We have coordinated with the DHS and will continue to do so during the development of the final rule. U.S. Customs and Border Protection indicated that construction and maintenance of boat ramps, sediment removal, and dam construction may be affected by the designation of critical habitat for the Texas hornshell. We note that Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out the Department's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended ("IIRIRA"). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that he determines are necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA. On February 20, 2020, the Secretary of Homeland Security issued waivers for legal requirements covering border barrier activities directly in the vicinity of the Texas hornshell's known range (85 FR 9794).

### *Exclusions Based on Other Relevant Impacts*

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as habitat conservation plans, safe harbor agreements, or CCAAs, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We have been in contact with the Kickapoo Traditional Tribe of Texas during the development of this proposed rule and will continue to do so during the development of final critical habitat. We also consider any social impacts that might occur because of the designation.

### **Public Hearings**

We have scheduled a public informational meeting and public hearing on this proposed rule to designate critical habitat for the Texas hornshell. We will hold the public informational meeting and public hearing on the date and at the times listed above under *Public informational meeting and public hearing in DATES*. We are holding the public informational meeting and public hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit <https://www.fws.gov/southwest/>. Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials>) prior to the public informational meeting and public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral

comments) regarding this proposed rule. While the public informational meeting will be an opportunity for dialogue with the Service, the public hearing is not: It is a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearing must register before the hearing (<https://www.fws.gov/southwest/>). The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

### **Required Determinations**

#### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

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

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

#### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 et seq.), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small

entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that

only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated.

Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Oil and gas leases occur within the watershed of both subunits in Unit 1: Pecos Tributary Unit. We do not expect designation of critical habitat for the Texas hornshell to significantly affect the production under these leases because we anticipate most companies will participate in the voluntary conservation measures provided in the CCAA. Further, in our economic analysis, we did not find that the designation of this proposed critical habitat will significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental

mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized

activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Texas hornshell in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for Texas hornshell does not pose significant takings implications for lands within or affected by the designation.

*Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we request information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in New Mexico and Texas. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas

that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

#### *Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

#### *National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).] However, when the range of the species includes States within the Tenth Circuit, such as that of the Texas hornshell, under the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. We invite the public to comment on the extent to which this proposed regulation may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing this proposed rule.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

There are tribal lands in Texas included in this proposed designation of critical habitat. The Kickapoo Indian Reservation of Texas owns 1.3 km (0.8

mi) adjacent to the Rio Grande in the Rio Grande–Eagle Pass Reach subunit. Using the criteria found in the Criteria Used To Identify Critical Habitat section, we have determined that all of the areas proposed for designation on tribal lands are essential to the conservation of the species. We will seek government-to-government consultation with these tribes throughout the proposal and development of the final designation of Texas hornshell critical habitat.

#### *Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

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

#### **References Cited**

A complete list of references cited in this rulemaking is available on the internet at <http://www.regulations.gov> and upon request from the Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### **Authors**

The primary authors of this proposed rulemaking are the staff members of the Texas Coastal Ecological Services Field Office.

#### **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### **Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:



**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

Texas” under CLAMS to read as follows:

■ 1. The authority citation for part 17 continues to read as follows:

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by revising the entry for “Hornshell,

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
*	*	*	*	*
*	*	*	*	*
*	*	*	*	*
*	*	*	*	*
*	*	*	*	*
*	*	*	*	*
*	*	*	*	*
*	*	*	*	*

\* \* \* \* \*  
■ 3. In § 17.95, amend paragraph (f) by adding an entry for “Texas Hornshell *Popenaias popeii*,” after the entry for “Carolina Heelsplitter (*Lasmigona decorata*)”, to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*  
(f) *Clams and snails.*  
\* \* \* \* \*

Texas Hornshell (*Popenaias popeii*)

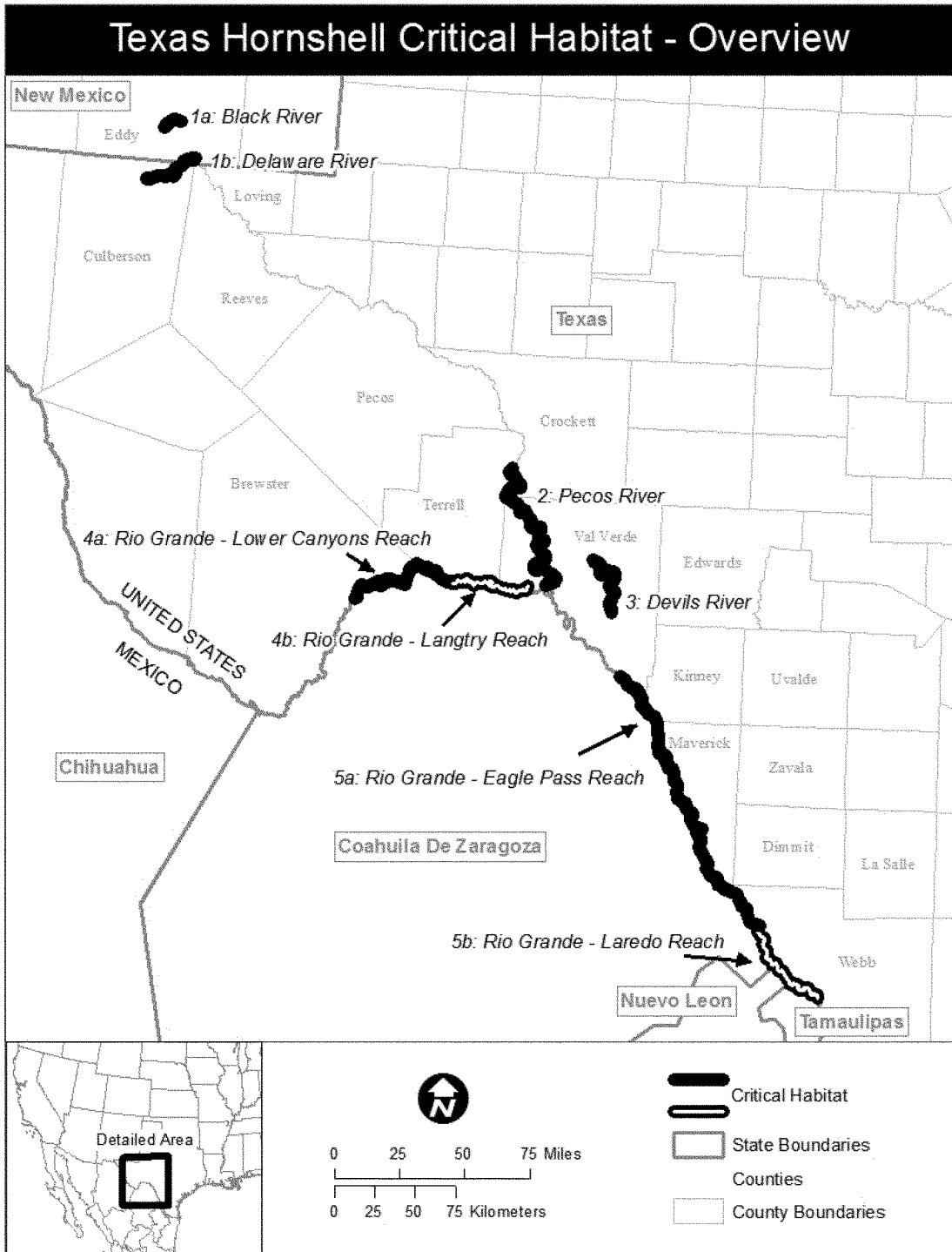
(1) Critical habitat units are depicted for Eddy County, New Mexico, and in Brewster, Culberson, Kinney, Maverick, Terrell, Val Verde, and Webb Counties, Texas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Texas hornshell consist of a riverine system that includes:

- (i) Flowing water at rates high enough to support clean-swept substrate but not so high as to dislodge individuals;
- (ii) Crevices beneath boulders, shelves, and within undercut banks with seams of fine sediment;
- (iii) River carpsucker (*Carpiodes carpio*), red shiner (*Cyprinella lutrensis*), and gray rehorse (*Moxostoma congestum*) present; and
- (iv) Water quality parameters within the following ranges:
  - (A) Salinity below 0.9 ppt;
  - (B) Ammonia below 0.7 mg/L;
  - (C) Low levels of contaminants; and
  - (D) Dissolved oxygen levels within substrate >1.3mg/L.
- (3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

- (4) Data layers defining map units were created using U.S. Geological Survey digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 15N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service’s internet site, <https://www.fws.gov/southwest/es/TexasCoastal/>, at <http://www.regulations.gov> in Docket No. FWS–R2–ES–2018–0021, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.
- (5) *Note:* Index map follows:

BILLING CODE 4333–15–P



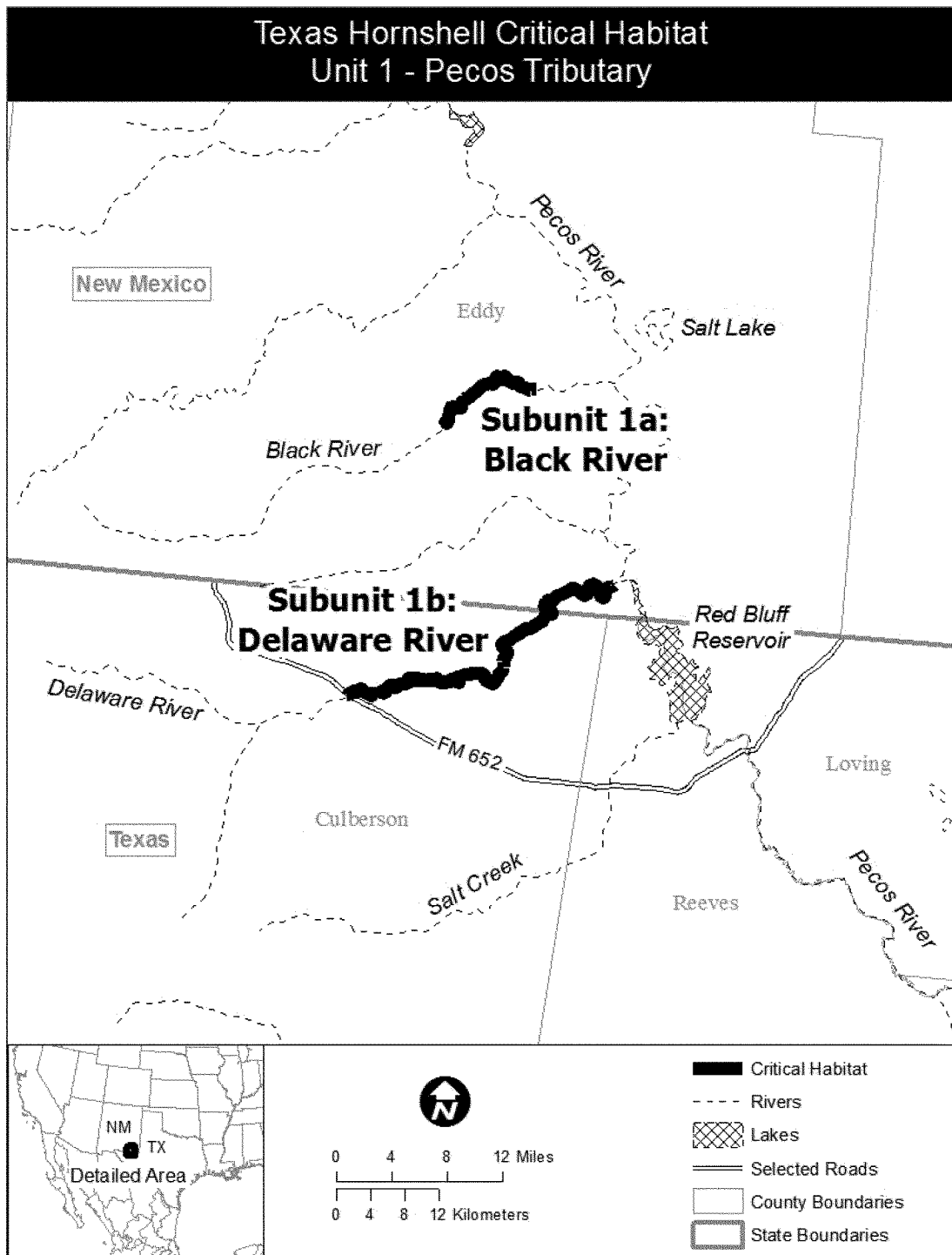
(6) Unit 1: Pecos Tributary Unit, Eddy County, New Mexico, and Culberson County, Texas.

(i) Unit 1 consists of two subunits: Subunit 1a (Black River Subunit) contains 15.6 km (9.7 mi) in Eddy

County, New Mexico, and is composed of lands in private ownership; Subunit 1b (Delaware River Subunit) contains 50.0 km (31.1 mi) in Eddy County, New Mexico, and Culberson County, Texas, and is composed of lands in Federal

(13.2 km (8.2 mi)) and private (36.8 km (22.9 mi)) ownership.

(ii) Map of Unit 1, Pecos Tributary Unit, Eddy County, New Mexico, and Culberson County, Texas, follows:

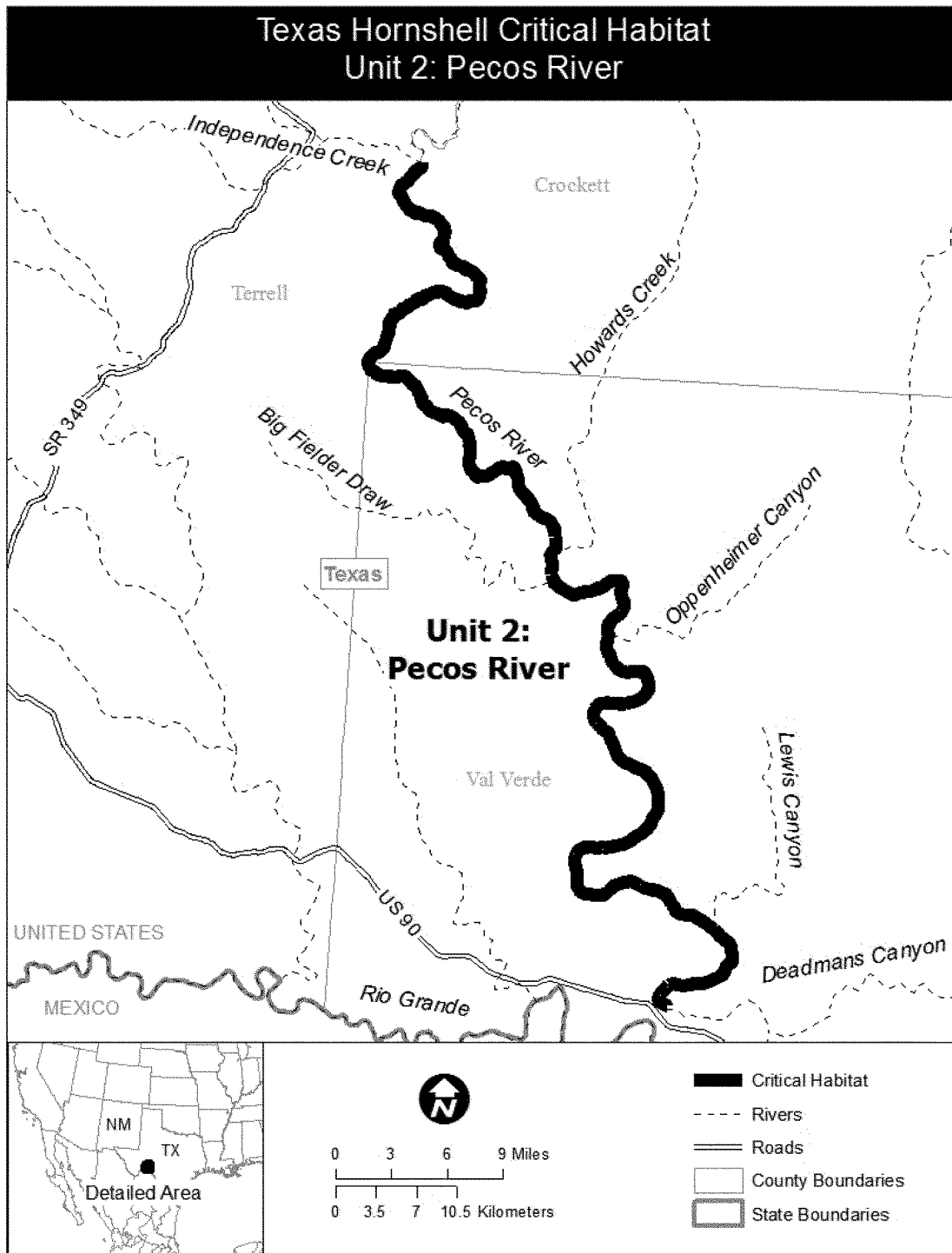


(7) Unit 2: Pecos River Unit, Val Verde and Terrell Counties, Texas.

(i) Unit 2 consists of 137.9 km (85.7 mi) in Val Verde and Terrell Counties, Texas, and is composed of lands in

Federal (2.7 km (1.7 mi)), non-governmental organization (7.6 km (4.7 mi)), and private (127.6 km (79.3 mi)) ownership.

(ii) Map of Unit 2, Pecos River Unit, Val Verde and Terrell Counties, Texas, follows:



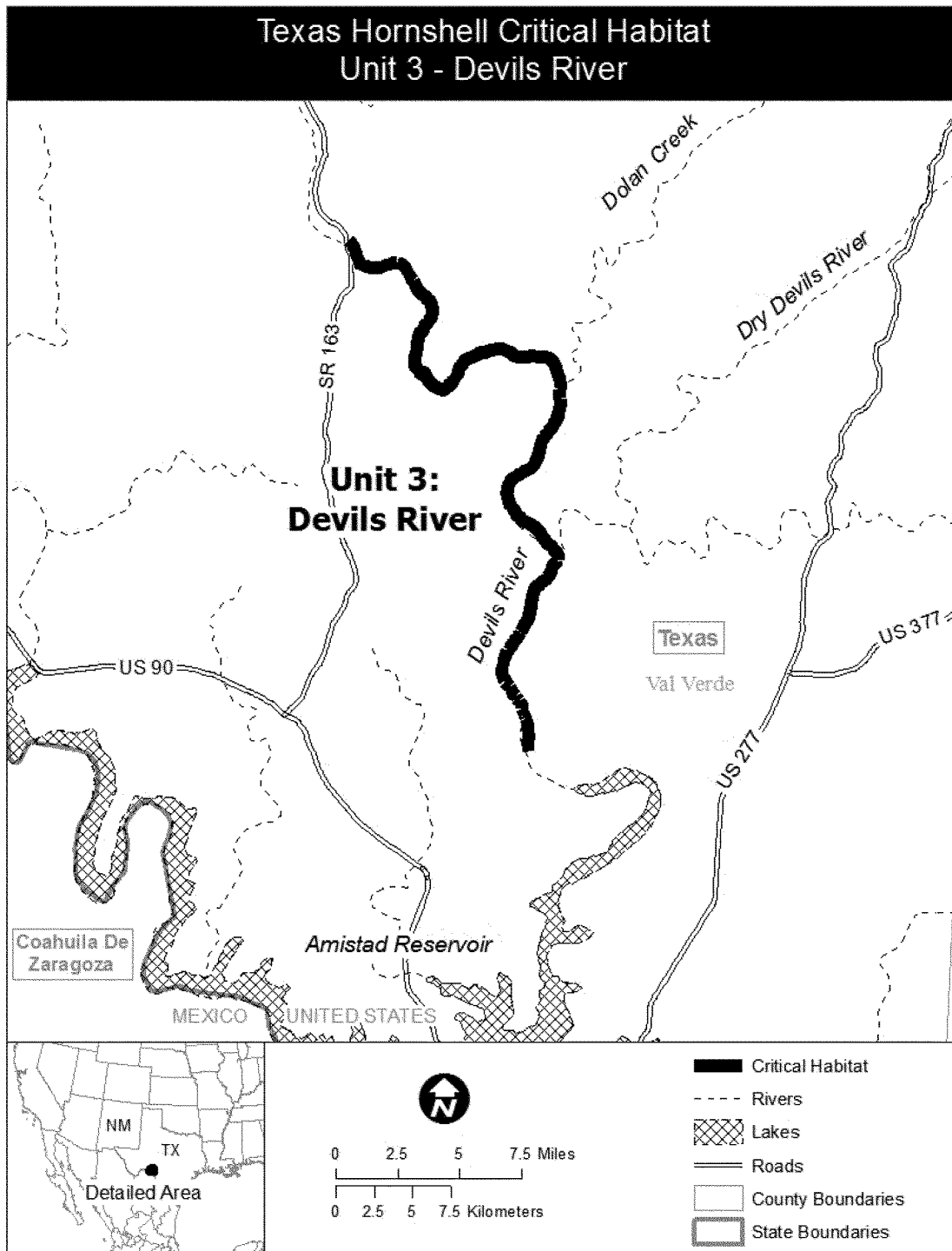
(8) Unit 3: Devils River Unit, Val Verde County, Texas.

(i) Unit 3 consists of 53.1 km (33.0 mi) in Val Verde County, Texas, and is

composed of lands in Federal (2.6 km (1.6 mi)), State (1.6 km (1.0 mi)), non-governmental organization (16.7 km

(10.4 mi)), and private (32.2 km (20.0 mi)) ownership.

(ii) Map of Unit 3, Devils River Unit, Val Verde County, Texas, follows:



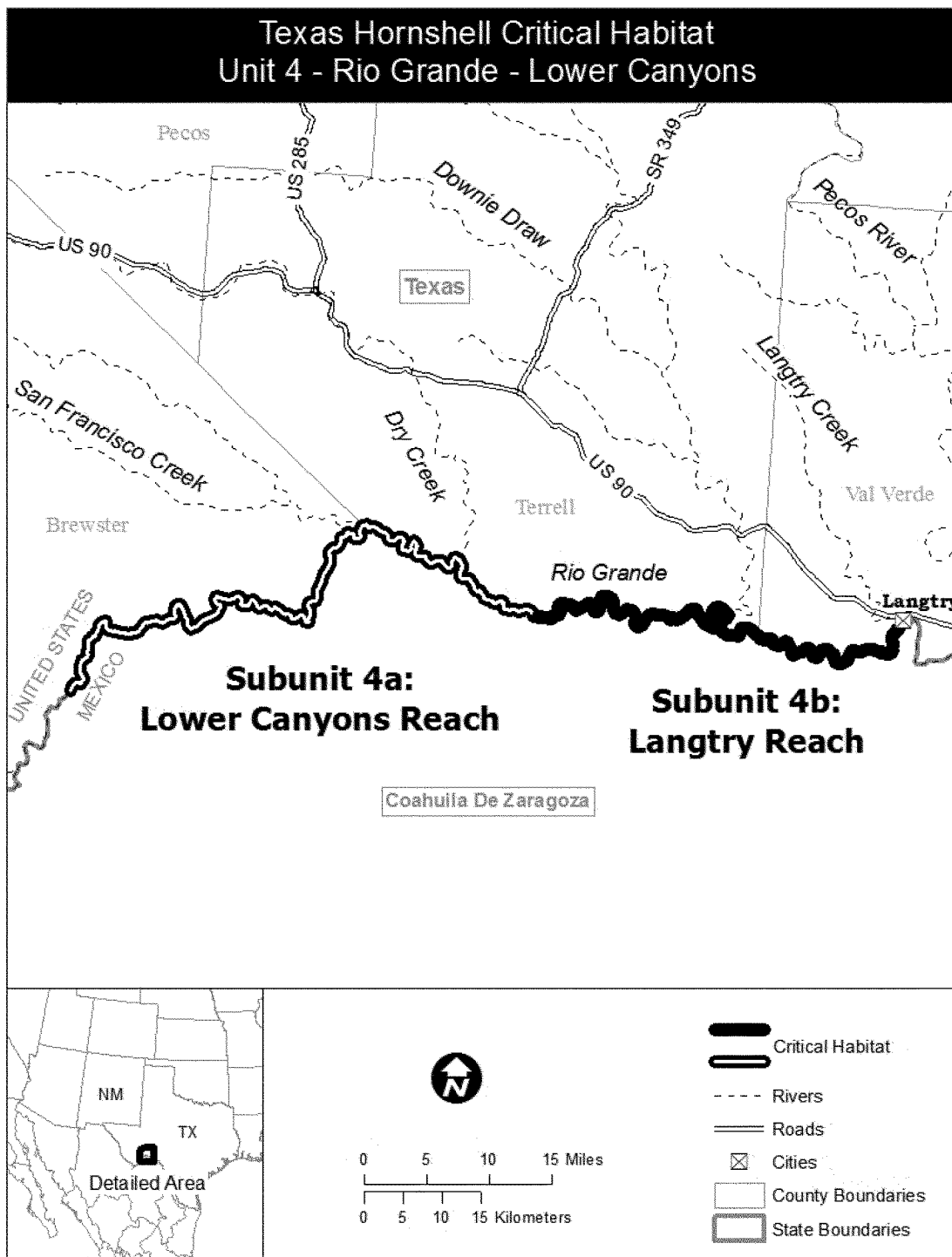
(9) Unit 4: Rio Grande—Lower Canyons Unit, Terrell, Brewster, and Val Verde Counties, Texas.

(i) Unit 4 consists of two subunits: Subunit 4a (Lower Canyons Reach Subunit) contains 107.3 km (66.7 mi) in

Terrell and Brewster Counties, Texas, and is composed of lands in State (7.1 km (4.4 mi)), and Federal (100.3 km (62.3 mi)) ownership; Subunit 4b (Langtry Reach Subunit) contains 74.8 km (46.5 mi) in Brewster and Val Verde

Counties, Texas, and is composed of lands in Federal (69.8 km (43.4 mi)) and private (5.0 km (3.1 mi)) ownership.

(ii) Map of Unit 4, Rio Grande—Lower Canyons Unit, Terrell, Brewster, and Val Verde Counties, Texas, follows:



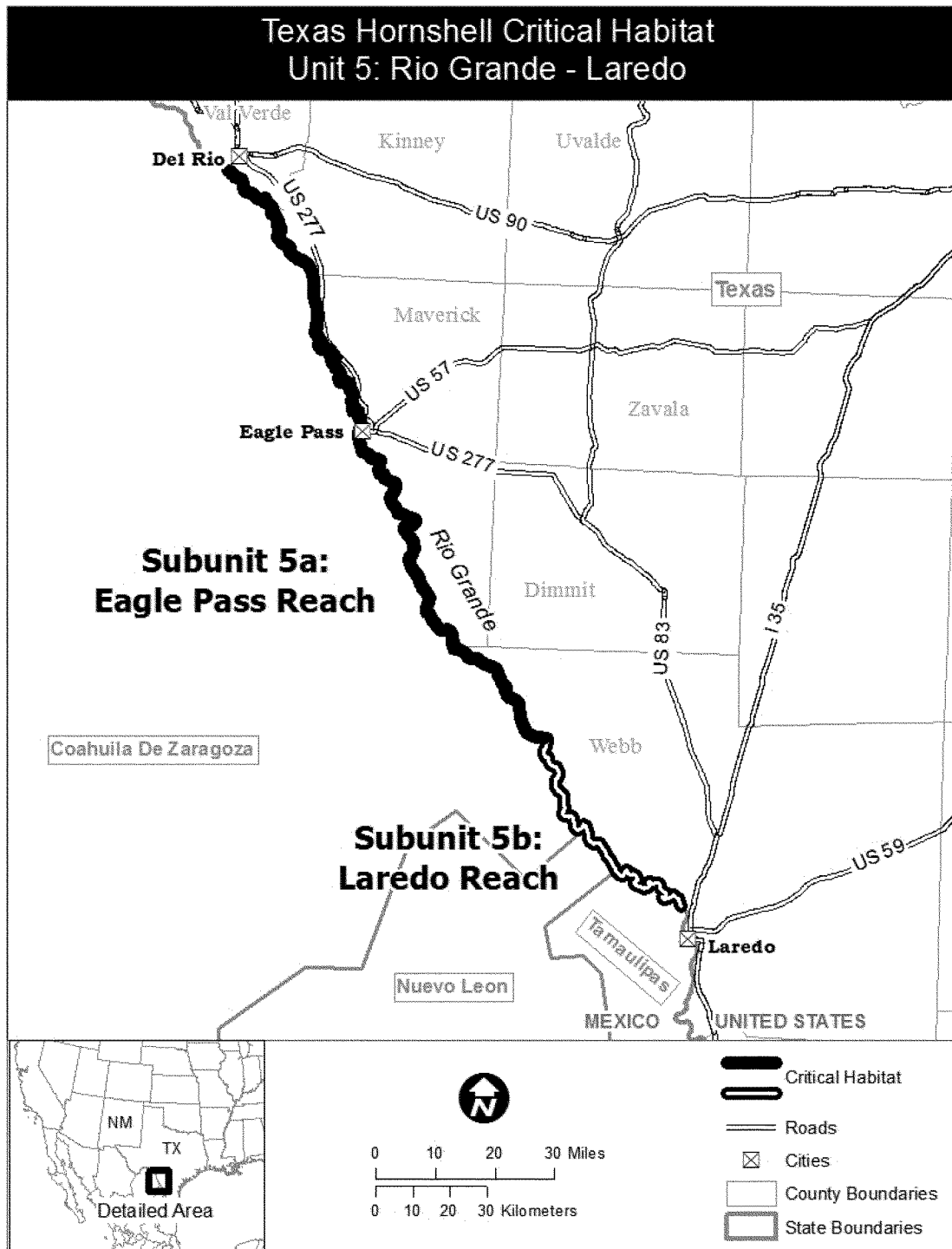
(10) Unit 5: Rio Grande—Laredo Unit, Kinney, Maverick, and Webb Counties, Texas.

(i) Unit 5 consists of two subunits: Subunit 5a (Eagle Pass Reach Subunit) contains 223.2 km (138.7 mi) in Kinney

and Maverick Counties, Texas, and is composed of lands in city (0.8 km (0.5 mi)), Tribal (1.3 km (0.8 mi)), and private (221.1 km (137.4 mi)) ownership; Subunit 5b (Laredo Reach Subunit) contains 84.0 km (52.2 mi) in Webb

County, Texas, and is composed of lands in city (0.5 km (0.3 mi)) and private (83.5 km (51.9 mi)) ownership.

(ii) Map of Unit 5, Rio Grande—Laredo Unit, Kinney, Maverick, and Webb Counties, Texas, follows:



\* \* \* \* \*

**Martha Williams,**  
*Principal Deputy Director, Exercising the  
Delegated Authority of the Director, U.S. Fish  
and Wildlife Service.*

[FR Doc. 2021-11966 Filed 6-9-21; 8:45 am]

BILLING CODE 4333-15-C

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### Agency Information Collection Activities: Supplemental Nutrition Assistance Program Forms: Applications, Periodic Reporting, and Notices

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection. This is a revision of the currently approved collection for the applications, periodic reporting, and notices burden calculations for the Supplemental Nutrition Assistance Program (SNAP).

**DATES:** Written comments must be received on or before August 9, 2021.

- *Preferred Method:* Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

- *Mail:* Send comments to Certification Policy Branch, Program Development Division, FNS, 1320 Braddock Place, Alexandria, VA 22314.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to the Certification Policy Branch, Program Development Division, FNS, 1320 Braddock Place, Alexandria, VA 22314 or via email to [SNAPCPBRules@usda.gov](mailto:SNAPCPBRules@usda.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 that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Title:* Supplemental Nutrition Assistance Program Forms: Applications, Periodic Reporting, and Notices.

*Form Number:* None.

*OMB Number:* 0584-0064.

*Expiration Date:* December 31, 2020.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Under Section 11(e)(8) of the Food and Nutrition Act of 2008 ("the Act") and 7 CFR 272.1(c)(4), SNAP State agencies ("State agencies") are limited in the use or disclosure of information obtained from SNAP application forms or contained in case files of participating SNAP households to certain persons, specifically those directly connected with:

- The administration of SNAP;
- The administration of other Federal or Federally assisted means-tested programs;
- The verification of immigration status of aliens;
- The Office of the Comptroller General of the U.S. for audit and examination authorized by any other provisions of law;
- Local, State, or Federal law enforcement for the purpose of investigating an alleged violation of the Act or SNAP regulations;
- Local, State, or Federal law enforcement for the purpose of investigating if a household member is a fleeing felon or a parole violator; and
- Agencies of the Federal Government for the purposes of collecting the amount of an over issuance from Federal pay.

While working on the renewal of this collection, which is currently under review with OMB, FNS identified that these activities (which we will refer to

simply as "third-party disclosures") were not previously included in this collection. Due to unprecedented workload as a result of COVID-19 and due to the outstanding need to adequately research and estimate the burden of SNAP third-party disclosure requirements on State agencies, FNS was unable to include this activity with the original renewal request submitted to OMB prior to its original expiration date. Through this notice, FNS intends to initiate a resolution of this discrepancy by addressing SNAP third-party reporting requirements in a revision of this collection. FNS will continue to refine these estimates through a continuous review and improvement cycle with the FNS Privacy Officer that may result in additional revisions in future renewals. In an effort to formulate accurate burden estimates for third-party reporting requirements, FNS consulted with six State agencies prior to drafting this notice. The estimates below incorporate feedback we received from those State agencies.

FNS estimates that each of the 53 SNAP State agencies may receive as many as 36 requests for household data disclosure annually by entities entitled to that information under Federal law.

One example of a third-party disclosure request is law enforcement officials requesting information regarding a fleeing felon. Per 7 CFR 273.11(n), upon written request, State agencies must disclose to law enforcement officers acting in their official capacity, the address, social security number, and, if available, photograph of the household member, if that household member is a fleeing felon.

The time needed to fulfill a third-party request for information is approximately 0.5 hours (30 minutes). The time accounted for includes 0.0835 hours (5 minutes) to read and review the request, 0.25 hours (15 minutes) to find the related information from their caseloads and research the request, and 0.167 hours (10 minutes) to draft and send the information to the third-party via email or mail.

Another third-party request may be received from a university for research purposes. These written requests for data should support Program research and evaluation. Disclosure requests for research purposes are allowable, as long



as they are directly related to the administration of SNAP per Section 11(e)(8) of the Act. Additional cooperation by State agencies, local agencies, institutions, facilities and contractor’s participation in programs authorized under the Act are required by section 17(k)(5) of the Act.

The time needed to fulfill a third-party request for information is approximately 0.5 hours (30 minutes). The time accounted for includes 0.0835 hours (5 minutes) to read and review the request, 0.25 hours (15 minutes) to find the related information from their caseloads and research the request, and

0.167 hours (10 minutes) to draft and send the information to the third-party via email or mail.

The current burden for this collection is 124,187,297 annual burden hours. Considering the burden adjustments made due to third-party disclosure requirements not delineated in previous burden tables, FNS calculates the revised total burden for this collection is 124,188,251 annual burden hours which reflects an increase of 954 burden hours due to program changes and adjustments. The total burden is summarized below.

*Affected Public:* State agencies that administer SNAP (SNAP State agencies).

*Estimated Number of Respondents:* 53 SNAP State agencies.

*Estimated Number of Responses per Respondent:* 36 responses per State SNAP agency.

*Estimated Total Annual Responses:* 1,908.

*Estimated Time per Response:* 30 minutes (0.5 hours) per response.

*Estimated Total Annual Burden on Respondents:* 954 hours (1,908 annual responses multiplied by 0.5 hours per response).

	Respondent	Estimated number of respondents	Average estimated number responses	Estimated total annual responses	Estimated avg. number of hours per response	Estimated total annual hours
New Request—Third Party Reporting.	State SNAP Agencies—Third-party Disclosures under 7 CFR 272.1(c)(4).	53	36	1,908	0.5	954
Currently Approved Reporting and Record-keeping Burden, 0584–0064.	All Affected Public (State Agencies, Individuals/ households).	19,701,777	47.60	937,793,284.93	0.13	124,187,297
Total Estimated Burden for 0584–0064.	.....	19,701,777	47.59	937,795,192.93	0.13	124,188,251

**Cynthia Long,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2021–12143 Filed 6–9–21; 8:45 am]

**BILLING CODE 3410–30–P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**Collaborative Forest Landscape Restoration Advisory Committee**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Collaborative Forest Landscape Restoration Advisory Committee (Committee) will hold a virtual meeting. The committee is authorized under Title IV of Omnibus Public Land Management Act of 2009. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Secretary of Agriculture (Secretary) on the selection of collaborative forest landscape restoration proposals as provided in section 8629 of the Agriculture Improvement Act of 2018. Committee information can be found at the following website: <https://www.fs.fed.us/restoration/CFLRP/advisory-panel.shtml>.

**DATES:** Meetings will be held on June 29–30 and July 1, 2021, with exact times listed on the website in the section titled **SUMMARY**.

All meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meeting will be held with virtual attendance only. For virtual meeting information, please see website listed under **SUMMARY**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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 at the USDA Forest Service Washington Office, Yates Building, 201 14th Street SW, Washington, DC 20250. Please call ahead to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Jessica Robertson, Integrated Restoration Coordinator, by phone at 202–302–1193 or via email at [jessica.robertson@usda.gov](mailto:jessica.robertson@usda.gov).

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Information Relay Service

(FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to evaluate 2020 Collaborative Forest Landscape Restoration Program (CFLRP) proposals and provide recommendations to the Secretary of Agriculture on proposal selection for funding.

The meetings are open to the public. The agendas will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement at any of the meetings should request in writing by June 22, 2021 to be scheduled on the agenda for that particular meeting. Individuals who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Jessica Robertson, Integrated Restoration Coordinator, 201 14th Street SW, Washington, DC 20250 or by email to [jessica.robertson@usda.gov](mailto:jessica.robertson@usda.gov).

**Meeting Accommodations:** If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings,

please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: June 4, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021-12123 Filed 6-9-21; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

[RUS-21-ELECTRIC-0006]

#### Notice of Request for Revision of a Currently Approved Information Collection

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Utilities Service's (RUS) intention to request a revision of a currently approved information collection package and invites comments.

**DATES:** Comments on this notice must be received by August 9, 2021 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Pamela Bennett, Rural Development Innovation Center, Regulations Management Division, U.S. Department of Agriculture, 1400 Independence Avenue SW, STOP 0793, South Building, Washington, DC 20250-0793. Telephone: (202) 720-9639. Email: [pamela.bennett@usda.gov](mailto:pamela.bennett@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for approval. 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 will 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to <http://www.regulations.gov> and, in the lower "Search Regulations and Federal Actions" box, select "Rural Housing Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select RUS-21-ELECTRIC-0006 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

**Title:** Advance of Loan Funds and Budgetary Control and Other Related Burdens.

**OMB Control Number:** 0572-0015.  
**Expiration Date of Approval:** February 28, 2022.

**Type of Request:** Revision of currently approved collection.

**Abstract:** The Rural Utilities Service, an Agency with the United States Department of Agriculture, Rural Development, administers the electric loan and loan guarantee program authorized under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq). In order to protect and ensure the Government's security interest in loans, and in exercise of due diligence, electric borrowers furnish information to RUS regarding the condition, financial or otherwise, related to expenditure of loan funds. This information collection is necessary to comply with applicable provisions of the RUS loan contract. RUS borrowers submit requisitions to RUS for funds for project costs incurred. Insured loan funds will be advanced only for projects which are included in the RUS approved borrowers workplan or approved amendment and in an approved loan, as amended. The process of loan advances establishes the beginning of the audit trail of the use of loan funds which is required for subsequent RUS compliance audits. There are two official forms included in this information collection, RUS Forms 595 and 219.

The RUS Form 595 is used as a requisition for advances of funds. The form helps to assure that loan funds are

advanced only for the budget purposes and amount approved by RUS. According to the applicable provisions of the RUS loan contract, borrowers must certify with each request for funds to be approved for advance, which funds are for projects previously approved. When a prospective borrower requests and is granted a RUS loan, a loan contract is established between the Federal government, acting through the RUS Administrator, and the borrower. At the time this contract is entered into, the borrower must provide RUS with a list of projects for which loan funds will be spent, along with an itemized list of the estimated costs of these projects. Thus, the borrower receives a loan based upon estimated cost figures.

The RUS Form 219, Inventory of Work Orders, is one of the documents the borrower submits to RUS to support actual expenditures and an advance of loan funds. The form also serves as a connecting link and provides an audit trail that originates with the advance of funds and terminates with evidence supporting the propriety of expenditures for construction or retirement projects.

**Estimate of Burden:** Public reporting burden for this collection of information is estimated to average 1.56 hours per response.

**Respondents:** Not-for-profit institutions; Business or other for profit.

**Estimated Number of Respondents:** 598.

**Estimated Number of Responses per Respondent:** 15.54.

**Estimated Number of Total Responses:** 9,292.

**Estimated Total Annual Burden on Respondents:** 14,523 hours.

Copies of this information collection can be obtained from Pamela Bennett, Rural Development Innovation Center, Regulations Management Division, at (202) 720-9639. 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.

**Christopher A. McLean,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2021-12146 Filed 6-9-21; 8:45 am]

**BILLING CODE 3410-15-P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meetings of the Tennessee Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Tennessee Advisory Committee (Committee) will hold a meeting via web-conference on Thursday, June 17, 2021, at 12:00 p.m. Central Time. The purpose of the meeting is for the committee to discuss proposed civil rights topics of study.

**DATES:** The meetings will be held on: Thursday, June 17, 2021, at 12:00 p.m. Central Time <https://civilrights.webex.com/civilrights/j.php?MTID=m992749f83df222cdaaa858ecac88662f> or Join by phone: 800-360-9505 USA Toll Free; Access code: 1992 414 037.

**FOR FURTHER INFORMATION CONTACT:** David Barreras, Designated Federal Officer, at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov) or (202) 499-4066.

**SUPPLEMENTARY INFORMATION:** Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov).

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://www.facadatabase.gov) under the Commission on Civil Rights, Tennessee Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

#### Agenda

- I. Welcome & Roll Call
- II. Chair's Comments
- III. Committee Discussion

- IV. Next Steps
- V. Public Comment
- VI. Adjournment

Dated: June 7, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021-12190 Filed 6-9-21; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

#### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Services Surveys: BE-45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of Information Collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before August 9, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments to Christopher Stein, Chief, Services Surveys Branch, Bureau of Economic Analysis, by email to [christopher.stein@bea.gov](mailto:christopher.stein@bea.gov) or [PRAcomments@doc.gov](mailto:PRAcomments@doc.gov). Please reference OMB Control Number 0608-0066 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 Christopher Stein, Chief, Services Surveys Branch, Bureau of Economic Analysis; 301-278-9189; or via email at [christopher.stein@bea.gov](mailto:christopher.stein@bea.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons (Form BE-45) is a survey that collects data from U.S. persons who engage in covered insurance transactions. A U.S. person means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), resident in the United States or subject to the jurisdiction of the United States. A U.S. person must report if they had combined transactions in the covered insurance services with foreign persons that exceeded \$8 million (based on absolute value) for the previous calendar year or are expected to exceed that amount during the current calendar year.

The data are needed to monitor U.S. trade in insurance services, to analyze the impact of these cross-border services on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities. The data are used in estimating the trade in insurance services component of the U.S. international transactions accounts (ITAs) and national income and product accounts (NIPAs).

The Bureau of Economic Analysis (BEA) is proposing a single modification to the survey reporting requirements and a change to the survey due date, beginning with reporting for first quarter 2022. The proposed modifications to the BE-45 survey would allow BEA to increase the quality and usefulness of BEA's statistics on trade in insurance services.

BEA proposes to adjust the reporting requirements of the survey so they are applied based on a combined threshold for premiums, losses, and auxiliary services, for the eight covered transaction categories: (1) Premiums earned on reinsurance assumed from insurance companies resident abroad; (2) losses incurred on reinsurance assumed from insurance companies resident abroad; (3) premiums earned on primary insurance sold to foreign persons; (4) losses incurred on primary insurance sold to foreign persons; (5) premiums incurred on reinsurance ceded to insurance companies resident abroad; (6) losses recovered on reinsurance ceded to insurance companies resident abroad; (7) receipts for auxiliary insurance services; and (8) payments for auxiliary insurance

services. U.S. persons with combined transactions in excess of \$8 million (based on absolute value), would be required to disaggregate all transaction types by country and by relationship of the foreign transactor to the U.S. reporter (foreign affiliate, foreign parent group, or unaffiliated) on the mandatory schedule(s). On the current survey, the reporting requirements are applied for each transaction type separately. This change will align the survey's reporting requirements with those of the other quarterly services surveys conducted by BEA.

BEA also proposes to change the due date of the survey to 30 days after the close of each calendar quarter from 45 days for the three quarters that are not the final calendar quarter of the year. For the close of the final calendar quarter of the year, reports would be due 45 days after the close of the quarter instead of 90 days. Shortening the reporting timeline will allow BEA to produce more accurate and complete trade in services statistics in preliminary estimates of the ITAs, which is critical information for policymakers' timely decisions on international trade policy. The earlier due date will allow BEA to use more reported data for preliminary statistics, improving the accuracy of both the aggregates and the country detail, and reducing revisions in subsequent statistical releases. In addition, the proposed reporting deadlines are also consistent with the reporting deadlines of BEA's quarterly direct investment surveys.

BEA estimates there will be a small change in the number of respondents that would now be required to provide additional country and affiliation detail on the mandatory schedules due to the change in reporting requirements. Most quarterly respondents are large enough that they are already required to report detail on the mandatory schedules. BEA estimates that approximately 13 additional respondents would now be required to provide the additional detail that were not previously required to do so, and on average would report transactions with 3 countries.

The additional mandatory reporting for individual transactions previously below the reporting thresholds, resulting from the application of the threshold to combined transactions, should have a minimal impact on reporting burden for the reporters who will now be required to complete the mandatory schedules. Since these respondents represent only a small portion of the total number of reporters already filing full country and affiliation detail, and because BEA believes this

data is readily available in their existing accounting records, overall burden for completing the full survey with data will continue to average 9 hours per response.

BEA estimates there will be no change in burden hours per response as a result of the proposed change in survey due dates. While survey respondents will have to file earlier, the burden for the survey is unchanged because the same information will be required on the survey as in the past. The language in the instructions and definitions will be reviewed and adjusted as necessary to clarify survey requirements.

## II. Method of Collection

BEA contacts potential respondents by mail at the end of each quarter. Respondents would be required to file the completed BE-45 forms within 30 days after the end of each calendar quarter that is not the final quarter of the year and within 45 days after the close of the final calendar quarter of the year. Reports would be required from each U.S. person that had combined transactions in the covered insurance services with foreign persons that exceeded \$8 million (based on absolute value), for the previous calendar year or are expected to exceed that amount during the current calendar year. Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

BEA offers its electronic filing option, the eFile system, for use in reporting on Form BE-45. For more information about eFile, go to [www.bea.gov/efile](http://www.bea.gov/efile). In addition, BEA posts all its survey forms and reporting instructions on its website, [www.bea.gov/ssb](http://www.bea.gov/ssb). These may be downloaded, completed, printed, and submitted via fax or mail.

## III. Data

*OMB Control Number:* 0608-0066.

*Form Number(s):* BE-45.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 2,200 annually (550 filed each quarter; 515 reporting mandatory data, and 35 that would file exemption claims or voluntary responses).

*Estimated Time per Response:* 9 hours is the average for those reporting data and one hour is the average for those filing an exemption claim. Hours may vary considerably among respondents because of differences in company size and complexity.

*Estimated Total Annual Burden Hours:* 18,680.

*Estimated Total Annual Cost to Public:* \$0.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* International Investment and Trade in Services Survey Act (Pub. L. 94-472, 22 U.S.C. 3101-3108, as amended).

## IV. Request for Comments

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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. 2021-12194 Filed 6-9-21; 8:45 am]

**BILLING CODE 3510-06-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-7-2021]

#### **Foreign-Trade Zone (FTZ) 134— Chattanooga, Tennessee; Authorization of Production Activity; Wacker Polysilicon North America, LLC (Hydrophilic Fumed Silica); Charleston, Tennessee**

On February 5, 2021, Wacker Polysilicon North America, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 134B, in Charleston, Tennessee.

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 (86 FR 9321–9322, February 12, 2021). On June 7, 2021, 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: June 7, 2021.

**Andrew McGilvray**,  
Executive Secretary.

[FR Doc. 2021–12195 Filed 6–9–21; 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 Administrative Review, Final Determination of No Shipments, and Final Successor-in-Interest Determination; 2018–2019

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that Hyosung Heavy Industries Corporation (Hyosung) made sales of large power transformers from the Republic of Korea (Korea) at less than normal value during the period of review (POR) August 1, 2018, through July 31, 2019.

**DATES:** Applicable June 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** John 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 December 18, 2020, Commerce published the *Preliminary Results*.<sup>1</sup> A summary of the events that occurred since Commerce published these *Preliminary Results*, as well as a full discussion of the issues raised by parties for these final results, may be found in

<sup>1</sup> See *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 2018–2019; Preliminary Determination of No Shipments; and Preliminary Successor-in-Interest Determination*, 85 FR 82439 (December 18, 2020) (*Preliminary Results*).

the Issues and Decision Memorandum, which is hereby adopted by this notice.<sup>2</sup>

The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>.

On March 31, 2021, Commerce extended the deadline for these final results of review until June 4, 2021.<sup>3</sup>

##### Scope of the Order

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080, and 8504.90.9540. For a complete description of the scope of the order, see the accompanying Issues and Decision Memorandum.

##### Final Determination of No Shipments

In the *Preliminary Results*, Commerce determined that LSIS Co. Ltd. (LSIS) had no shipments of subject merchandise during the POR.<sup>4</sup> No party commented on this issue and because we have not received any information to contradict our preliminary finding, we continue to find that LSIS did not have any shipments of subject merchandise during the POR and intend to issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on the final results of this review.

##### Final Successor-in-Interest Determination

In the *Preliminary Results*, Commerce determined that LS Electric Co., Ltd. (LS Electric) is the successor-in-interest to LSIS.<sup>5</sup> As no party commented on this issue and because we have not received

<sup>2</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2018–2019," dated concurrently with this notice (Issues and Decision Memorandum).

<sup>3</sup> See Memorandum, "Large Power Transformers from the Republic of Korea; Antidumping Duty Administrative Review; 2018–2019: Extension of Deadline for Final Results," dated March 31, 2021.

<sup>4</sup> See *Preliminary Results*.

<sup>5</sup> *Id.*

any information to contradict our preliminary finding, we continue to find that LS Electric is the successor-in-interest to LSIS.

##### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. For a list of the issues raised by parties, see the Appendix to this notice.

##### Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made certain changes to the margin calculations for Hyosung.<sup>6</sup> As a result of these changes, the weighted-average dumping margin also changes for the companies not selected for individual examination.

##### Final Results of the Review

The final weighted-average dumping margins are as follows:

Producer or exporter	Weighted-average dumping margin (percent)
Hyosung Heavy Industries Corporation .....	52.47
Hyundai Electric & Energy Systems Co., Ltd .....	52.47
Iljin Electric Co., Ltd .....	52.47
Iljin .....	52.47

##### Disclosure

We will disclose the calculations performed to parties in this proceeding within five days after the date of the public announcement of these final results of review, in accordance with 19 CFR 351.224(b).

##### Assessment Rate

Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries.<sup>7</sup> For any individually examined respondents whose weighted-average dumping margin is above *de minimis*, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping

<sup>6</sup> See Issues and Decision Memorandum at Comment 3; see also Memorandum, "Analysis of Data Submitted by Hyosung Corporation in the Final Results of the 2018–2019 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea," dated concurrently with this notice.

<sup>7</sup> In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

calculated for the importer's examined sales to the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.5 percent), Commerce will issue instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the amount of dumping calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, and the respondent has reported reliable entered values, we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR.

Consistent with its recent notice,<sup>8</sup> Commerce intends to issue appropriate assessment instructions directly to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be equal to the weighted-average dumping margins established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the

most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 22.00 percent, the all-others rate established in the less-than-fair-value investigation.<sup>9</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

As explained above, we find that LS Electric has provided sufficient evidence, based on the totality of the circumstances under Commerce's successor-in-interest criteria, to demonstrate that LS Electric is the successor-in-interest to LSIS. Accordingly, we intend to instruct CBP to continue collecting deposits from LS Electric, and any entries of merchandise produced by LS Electric, at the rate assigned to LSIS.

#### Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties did occur and the subsequent assessment of doubled antidumping duties.

#### Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

#### Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

Dated: June 3, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Successor-in-Interest
- V. No Shipments
- VI. Discussion of the Issues
  - A. Hyosung-Specific Issues
    - Comment 1: Sales Outside of the Ordinary Course of Trade
    - Comment 2: Date of Sale
    - Comment 3: Ministerial Errors
  - B. General Issues
    - Comment 4: Rate for Non-selected Respondents
- VII. Recommendation

[FR Doc. 2021-12185 Filed 6-9-21; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-869]

#### Passenger Vehicle and Light Truck Tires From Taiwan: Final Affirmative Determination of Sales at Less Than Fair Value; Correction

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Commerce (Commerce) published notice in the **Federal Register** of May 27, 2021, in which Commerce announced the final affirmative determination of the antidumping duty (AD) investigation on passenger vehicle and light truck tires (passenger tires) from Taiwan. This notice contained a typographic error in the "Scope of the Investigation" in Appendix I.

**FOR FURTHER INFORMATION CONTACT:** Chien-Min Yang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5484.

**SUPPLEMENTARY INFORMATION:**

<sup>8</sup> See *Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 3995 (January 15, 2021).

<sup>9</sup> See *Large Power Transformers from the Republic of Korea: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012).

## Correction

In the **Federal Register** of May 27, 2021, in FR Doc 2021–11263, on page 20565, in the first column, correct paragraph (5)(a) to say the following: “The tires have a 265/70R17, 255/80R17, 265/70R16, 245/70R17, 245/75R17, 245/70R18, or 265/70R18 size designation;”

## Background

On May 27, 2021, Commerce published in the **Federal Register** the *Final Determination* on passenger tires from Taiwan.<sup>1</sup> Due to a typographical error, the scope in Appendix I at paragraph 5(a) included an incorrect tire size designation. Specifically, in Appendix I of the *Final Determination*, at paragraph (5)(a) of the exclusion language, it reads: “The tires have a 265/70R17, 255/80R17, 265/70R16, 245/70R17, 245/75R17, 265/70R18, or 265/70R18 size designation.” The paragraph should have read: “The tires have a 265/70R17, 255/80R17, 265/70R16, 245/70R17, 245/75R17, 245/70R18, or 265/70R18 size designation” (emphasis added).

## Notification to Interested Parties

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.210(c).

Dated: June 4, 2021.

### Christian Marsh,

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix—Scope of the Investigation

The scope of this investigation is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this investigation may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol “DOT” on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P—Identifies a tire intended primarily for service on passenger cars.

LT—Identifies a tire intended primarily for service on light trucks.

Suffix letter designations:

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose

passenger vehicles used in nominal highway service.

All tires with a “P” or “LT” prefix, and all tires with an “LT” suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a “P” or “LT” prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that fits passenger cars or light trucks. Sizes that fit passenger cars and light trucks include, but are not limited to, the numerical size designations listed in the passenger car section or light truck section of the Tire and Rim Association Year Book, as updated annually. The scope includes all tires that are of a size that fits passenger cars or light trucks, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope are the following types of tires:

(1) Racing car tires; such tires do not bear the symbol “DOT” on the sidewall and may be marked with “ZR” in size designation;

(2) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;

(3) non-pneumatic tires, such as solid rubber tires;

(4) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) The size designation and load index combination molded on the tire’s sidewall are listed in Table PCT–1R (“T” Type Spare Tires for Temporary Use on Passenger Vehicles) or PCT–1B (“T” Type Diagonal (Bias) Spare Tires for Temporary Use on Passenger Vehicles) of the Tire and Rim Association Year Book.

(b) the designation “T” is molded into the tire’s sidewall as part of the size designation, and,

(c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed is 81 MPH or a “M” rating;

(5) tires designed and marketed exclusively as temporary use spare tires for light trucks which, in addition, exhibit each of the following physical characteristics:

(a) The tires have a 265/70R17, 255/80R17, 265/70R16, 245/70R17, 245/75R17, 245/70R18, or 265/70R18 size designation;

(b) “Temporary Use Only” or “Spare” is molded into the tire’s sidewall;

(c) the tread depth of the tire is no greater than 6.2 mm; and

(d) Uniform Tire Quality Grade Standards (“UTQG”) ratings are not molded into the tire’s sidewall with the exception of 265/70R17 and 255/80R17 which may have UTQG molded on the tire sidewall;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:

(a) The size designation molded on the tire’s sidewall is listed in the ST sections of the Tire and Rim Association Year Book,

(b) the designation “ST” is molded into the tire’s sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is “For Trailer Service Only” or “For Trailer Use Only”,

(d) the load index molded on the tire’s sidewall meets or exceeds those load indexes listed in the Tire and Rim Association Year Book for the relevant ST tire size, and

(e) either

(i) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed does not exceed 81 MPH or an “M” rating; or

(ii) the tire’s speed rating molded on the sidewall is 87 MPH or an “N” rating, and in either case the tire’s maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book; or

(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) The size designation and load index combination molded on the tire’s sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the Tire and Rim Association Year Book,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is “Not For Highway Service” or “Not for Highway Use”,

(c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed 55 MPH or a “G” rating, and

(d) the tire features a recognizable off-road tread design;

(8) Tires designed and marketed for off-road use as all-terrain-vehicle (ATV) tires or utility-terrain-vehicle (UTV) tires, and which, in addition, exhibit each of the following characteristics:

(a) The tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed 87 MPH or an “N” rating, and

(b) both of the following physical characteristics are satisfied:

(i) The size designation and load index combination molded on the tire’s sidewall

<sup>1</sup> See *Passenger Vehicle and Light Truck Tires from Taiwan: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 28563 (May 27, 2021) (*Final Determination*).



does not match any of those listed in the passenger car or light truck sections of the Tire and Rim Association Year Book, and

(ii) The size designation and load index combination molded on the tire's sidewall matches any of the following size designation (American standard or metric) and load index combinations:

American standard size	Metric size	Load index
26x10R12 .....	254/70R/12	72
27x10R14 .....	254/65R/14	73
28x10R14 .....	254/70R/14	75
28x10R14 .....	254/70R/14	86
30X10R14 .....	254/80R/14	79
30x10R15 .....	254/75R/15	78
30x10R14 .....	254/80R/14	90
31x10R14 .....	254/85R/14	81
32x10R14 .....	254/90R/14	95
32x10R15 .....	254/85R/15	83
32x10R15 .....	254/85R/15	94
33x10R15 .....	254/90R/15	86
33x10R15 .....	254/90R/15	95
35x9.50R15 .....	241/105R/15	82
35x10R15 .....	254/100R/15	97

The products covered by this investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.90.10.10, 4011.90.10.50, 4011.90.20.10, 4011.90.20.50, 4011.90.80.10, 4011.90.80.50, 8708.70.45.30, 8708.70.45.46, 8708.70.45.48, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2021-12196 Filed 6-9-21; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Reporting of Sea Turtle Incidental Take in Virginia Chesapeake Bay Pound Net Operations

**AGENCY:** National Oceanic & Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995

(PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before August 9, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at [Adrienne.thomas@noaa.gov](mailto:Adrienne.thomas@noaa.gov). Please reference OMB Control Number 0648-0470 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 Carrie Upite, Greater Atlantic Regional Fisheries Office, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930; (978) 282-8475; or [carrie.upite@noaa.gov](mailto:carrie.upite@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

This request is for extension of a current information collection.

Since 2002, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) has promulgated several rules restricting the use of large mesh and stringer pound net leaders in certain Virginia Chesapeake Bay waters during the late spring/early summer each year. On June 17, 2002, an interim final rule was published (67 FR 41196) restricting leader use, which also required year-round reporting of sea turtle takes. In 2004, NMFS issued a final rule further restricting pound net leader use in Virginia (69 FR 24997). The 2004 rule retained the reporting requirement from the 2002 rule. These regulations (modifications to 50 CFR parts 222 and 223) were implemented as a result of high sea turtle strandings each spring in Virginia and the documented take of sea turtles in pound net leaders. On March 31, 2018, a revised Biological Opinion on NMFS gear regulations in the Virginia pound net fishery was completed pursuant to section 7 of the Endangered Species Act of 1973, as amended (ESA). An Incidental Take Statement was included in this Biological Opinion, exempting the incidental take of a certain number of

loggerhead, Kemp's ridley, green and leatherback sea turtles in pound net operations.

A non-discretionary term and condition of the Incidental Take Statement involved the reporting to NMFS of live or dead sea turtles taken in pound net operations (reflected in 50 CFR 223.206). The collection of this information on the incidental take of sea turtles in the Virginia pound net fishery is necessary to ensure sea turtles are being conserved and protected, as mandated by the Endangered Species Act (ESA). Documenting the accurate occurrence of sea turtle incidental take in pound net operations will help to determine if additional regulatory actions or management measures are necessary to protect sea turtles caught in pound net operations. This information will help NMFS better assess the Virginia pound net fishery and its impacts (or lack thereof) on sea turtle populations in the Virginia Chesapeake Bay. The collection of this information is also imperative to ensure that the Incidental Take Statement is not being exceeded, the anticipated take levels are appropriate, and the effects analysis in the Biological Opinion is accurate. Further, reporting the take of live, injured sea turtles caught in pound net gear will ensure these turtles are transferred immediately to a stranding and rehabilitation center for appropriate medical treatment.

##### II. Method of Collection

Reports may be made either by telephone or email.

##### III. Data

*OMB Control Number:* 0648-0470.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 37.

*Estimated Time per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 167 hours.

*Estimated Total Annual Cost to Public:* \$231 in recordkeeping/reporting costs.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Endangered Species Act.

##### IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department,



including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021-12136 Filed 6-9-21; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[RTID 0648-XB153]

**Marine Mammals and Endangered Species**

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

**ACTION:** Notice; issuance of permits.

**SUMMARY:** Notice is hereby given that permits have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

**ADDRESSES:** The permits and related documents are available for review upon written request via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore (Permit No. 25500), Shasta McClenahan, Ph.D. (Permit No. 25581), and Jordan Rutland (Permit No. 25520); at (301) 427-8401.

**SUPPLEMENTARY INFORMATION:** Notices were published in the **Federal Register** on the dates listed below that requests for a permit had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to [www.federalregister.gov](http://www.federalregister.gov) and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS

Permit No.	RTID	Applicant	Previous <b>Federal Register</b> notice	Issuance date
25500 .....	0648-XA943	University of Alaska Museum of the North, 907 Yukon Drive, Fairbanks, AK 99775 (Responsible Party: Link Olson, Ph.D.).	86 FR 14878; March 19, 2021 ....	May 6, 2021.
25581 .....	0648-XA959	Freedive Pictures, Ltd, St. Stephens Avenue Bristol, United Kingdom, BS1 1YL (Responsible Party: Sophie Morgan).	86 FR 15651; March 24, 2021 ....	May 6, 2021.
25520 .....	0648-XA958	BBC Natural History and Factual Productions Ltd., Broadcasting House, Whiteladies Road, Bristol, United Kingdom, BS8 2LR (Responsible Party: Daniel Rasmussen).	86 FR 15464; March 23, 2021 ....	May 25, 2021.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

**Authority:** The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of

endangered and threatened species (50 CFR parts 222-226), as applicable.

Dated: June 4, 2021.

**Julia Marie Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021-12121 Filed 6-9-21; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Telecommunications and Information Administration**

**Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; 911 Grant Program Performance Closeout Report**

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 2, 2021 during the 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Telecommunications and Information Administration, Commerce.

*Title:* 911 Grant Program Closeout Performance Report Request.

*OMB Control Number:* 06XX-XXXX.  
*Form Number(s):* None.

*Type of Request:* New information collection.

*Number of Respondents:* 36.

*Average Hours per Response:* 60 hours.

*Burden Hours:* 2,160 hours.

*Needs and Uses:* In 2012, the Next Generation 911 (NG911) Advancement Act of 2012 (Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, Title VI, Subtitle E (codified at 47 U.S.C. 942)) enacted changes to this program. It reauthorized the 911 Implementation Coordination Office (ICO), a joint effort between the National Highway Traffic Safety Administration (NHTSA) and the National Telecommunications and Information Administration (NTIA). It delineated the responsibilities of the ICO to include a joint program to establish and facilitate coordination and communication between Federal, State, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of 911 services.

The NG911 Advancement Act provided funding for grants to be used for the implementation and operation of 911 services, E911 services, migration to an IP-enabled emergency network, and adoption and operation of NG911 services and applications; the implementation of IP-enabled emergency services and applications enabled by NG911 services, including the establishment of IP backbone networks and the application layer software infrastructure needed to interconnect the multitude of emergency response organizations; and training public safety personnel, including call-takers, first responders, and other individuals and organizations who are part of the emergency response chain in 911 services. In August 2019, NTIA and NHTSA made \$109,250,000 in grant awards to 36 agencies.

The information collected for the closeout of this grant program will include various reporting requirements. The closeout performance report is a new collection instrument. All grantees will submit the closeout performance report, tangible property report and final financial report in accordance with 2 CFR part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance). It is important for NTIA and NHTSA to have this information so that they can effectively administer the grant program and account for the expenditure of funds.

*Affected Public:* Under this proposed effort, all grantees are required to submit the required report electronically via email. Reporting entities are the 36 grantees, making the total maximum number of respondents 36.

*Frequency:* One time. The reporting entities will be required to submit the Closeout Performance Report, Tangible Property Report and a final financial report.

*Respondents' Obligation:* Mandatory.

*Legal Authority:* 47 U.S.C. 942.

This information collection request may be viewed at [www.reginfo.gov](http://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](http://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 the title of the collection.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–12224 Filed 6–9–21; 8:45 am]

**BILLING CODE 3510–WL–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No. PTO–C–2021–0016]

#### New Implementation Date for Patent Practitioner Registration Statement and Continuing Legal Education Certification

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of revised implementation date.

**SUMMARY:** The United States Patent and Trademark Office (USPTO or Office) is delaying the implementation of the biennial mandatory registration statement required from registered patent practitioners and individuals granted limited recognition to practice before the USPTO in patent matters until November 1, 2024. However, beginning in the spring of 2022, registered patent practitioners and individuals granted recognition to practice before the USPTO in patent matters may voluntarily certify that they have completed six credit hours of

continuing legal education (CLE) in the preceding 24 months.

**DATES:** *New Implementation Date:* The USPTO anticipates that the registration statement will first be collected on November 1, 2024. The voluntary certification of CLE will commence in the spring of 2022.

**FOR FURTHER INFORMATION CONTACT:** William Covey, Deputy General Counsel and Director OED, at 571–272–4097. Please direct media inquiries to the USPTO’s Office of the Chief Communications Officer at 571–272–8400.

**SUPPLEMENTARY INFORMATION:** Pursuant to the final rule, Setting and Adjusting Patent Fees During Fiscal Year 2020, 85 FR 46932 (Aug. 3, 2020), registered patent practitioners and individuals granted limited recognition to practice before the USPTO in patent matters may be required to biennially submit a mandatory registration statement. See 37 CFR 11.11(a)(2). The final rule also provided that registered patent practitioners and individuals granted limited recognition to practice before the USPTO in patent matters who have completed six credits of CLE in the preceding 24 months (including five hours of CLE in patent law and practice and one hour of CLE in ethics) may voluntarily certify such completion to the OED Director. 37 CFR 11.11(a)(3)(i). In the final rule, the USPTO anticipated that practitioners would first be required to submit a registration statement in the spring of 2022, and that patent practitioners would make the voluntary CLE certification, if desired, when submitting the registration statement. 85 FR 46932, at 46948.

On October 9, 2020, the USPTO published proposed CLE guidelines with a request for comments in the **Federal Register**, seeking public input on the guidelines. 85 FR 64128. The request for comments closed on January 7, 2021. The USPTO received 26 comments, addressing both the proposed CLE guidelines and the provisions of the final patent fee rule which establish the biennial electronic registration statement.

After considering numerous factors, the USPTO has decided to delay the implementation of the registration statement. The decision to delay is based, in part, on the USPTO’s consideration of public comments received regarding the registration statement in response to the request for public comments on the proposed CLE guidelines. The USPTO’s decision is also based on a close analysis of operational priorities and budget. The USPTO notes that delaying

implementation of the registration statement will allow the Office to conserve resources by integrating the registration statement with other USPTO information systems. Based on these considerations, the USPTO anticipates that the registration statement will first be collected on November 1, 2024. Once a new date for collection of the registration statement is certain, the public will be given at least 120 days advance notice.

However, as stated in the 2020 patent fee rule, the USPTO will proceed with the voluntary CLE certification beginning in the spring of 2022. Prior to the implementation of the registration statement (*i.e.*, prior to November 1, 2024), registered patent practitioners and individuals granted limited recognition to practice in patent matters before the Office may voluntarily certify their CLE completion in accordance with 37 CFR 11.11(a)(3)(i) by logging into the Office of Enrollment and Discipline Information System—Customer Interface (OEDIS—CI), available at <https://oedci.uspto.gov/OEDCI/SignInServlet>. As registered patent practitioners and individuals granted limited recognition to practice in patent matters before the USPTO already use the OEDIS—CI system to update other information with OED, the USPTO believes that it will be efficient and convenient for practitioners to make the voluntary CLE certification, if they wish, through this same system. The USPTO will issue more specific guidance and instructions for making the certification in subsequent months.

**Andrew Hirshfeld,**

*Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2021–12149 Filed 6–9–21; 8:45 am]

BILLING CODE 3510–16–P

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## DEPARTMENT OF EDUCATION

### Applications for New Awards; Education Research and Special Education Research Grant Programs

**AGENCY:** Institute of Education Sciences, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for the Education Research and Special Education Research Grant Programs, Assistance Listing Numbers (ALNs) 84.305A, 84.305B, 84.305D, 84.305R, 84.305S,

and 84.324X. This notice relates to the approved information collection under OMB control number 4040–0001.

**DATES:** The dates when applications are available and the deadlines for transmittal of applications invited under this notice are indicated in the chart at the end of this notice and in the Requests for Applications (RFAs) that are posted at the following websites: <https://ies.ed.gov/funding>, [www.ed.gov/programs/edresearch/index.html](http://www.ed.gov/programs/edresearch/index.html), and [www.ed.gov/programs/specialedresearch/index.html](http://www.ed.gov/programs/specialedresearch/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 February 13, 2019 (84 FR 3768) and available at [www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf](http://www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf).

**FOR FURTHER INFORMATION CONTACT:** The contact person associated with a particular research competition is listed in the chart at the end of this notice, as well as in the relevant RFA and application package.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* In awarding these grants, the Institute of Education Sciences (IES) intends to provide national leadership in expanding knowledge and understanding of (1) developmental and school readiness outcomes for infants and toddlers with or at risk for a disability, (2) education outcomes for all learners from early childhood education through postsecondary and adult education, and (3) employment and wage outcomes when relevant (such as for those engaged in career and technical, postsecondary, or adult education). The IES research grant programs are designed to provide interested individuals and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all learners. These interested individuals include parents, educators, learners, researchers, and policymakers. In carrying out its grant programs, IES provides support for programs of research in areas of demonstrated national need.

*Competitions in This Notice:* IES is announcing seven research competitions through two of its centers:

The IES National Center for Education Research (NCER) is announcing five competitions—one competition in each of the following areas: Education research; education research training; systematic replication in education; statistical and research methodology in education; and using longitudinal data to support State education recovery policymaking.

The IES National Center for Special Education Research (NCSER) is announcing two competitions for research to accelerate pandemic recovery in special education.

*NCER Competitions*

*The Education Research Competition.* Under this competition, NCER will consider only applications that address one of the following topics:

- Career and Technical Education.
- Civics Education and Social Studies.
- Cognition and Student Learning.
- Early Learning Programs and Policies.
- Effective Instruction.
- English Learners.
- Improving Education Systems.
- Postsecondary and Adult Education.
- Literacy.
- Science, Technology, Engineering, and Mathematics (STEM) Education.
- Social and Behavioral Context for Academic Learning.

*Note:* While NCER is not now establishing a separate, stand-alone topic area within the Education Research Grants competition inviting research related to COVID–19 as authorized under the American Rescue Plan Act of 2021 (ARP), we invite applications to the standing topics listed above designed to accomplish this purpose. If you intend to submit a project in one of the topic areas identified above that is specifically intended to address COVID–19 learning loss, we ask that you express or state this intention clearly in your proposal and on item 4(b) of the SF424 Federal Application Assistance Form.

*The Research Training Programs in the Education Sciences Competition.* Under this competition, NCER will consider only applications that address one of the following topics:

- Early Career Mentoring Program for Faculty at Minority-Serving Institutions (MSIs).<sup>1</sup>

<sup>1</sup>To qualify as an MSI for the purpose of the Early Career Mentoring Program, the institution must

- Postdoctoral Research Training Program in the Education Sciences.
- Methods Training for Education Researchers.

*Research Grants Focused on Systematic Replication.* Under this competition, NCER will consider only applications that address identifying what works for whom and under what conditions in education through systematic replication.

*Statistical and Research Methodology in Education.* Under this competition, NCER will consider only applications that address one of the following topics:

- Regular Grants to support the development of new and improved methods, toolkits, guidelines, and syntheses.
- Early Career Grants to support the development of new and improved methods by early career researchers with the support of a mentor or advisory panel.

*Using Longitudinal Data to Support State Education Recovery Policymaking.* Under this competition, NCER will only consider applications that address State agencies' use of their State's education longitudinal data systems as they and local education agencies reengage their students after the disruptions caused by COVID-19.

#### NCSEER Competitions

*Research to Accelerate Pandemic Recovery in Special Education.* Under these competitions, NCSEER will consider only applications that directly address a pandemic-related problem, issue, program, policy, or practice that is important to a State or local education agency, has the potential to improve outcomes significantly and rapidly for students with or at risk for disabilities, and will provide actionable and timely results to districts and schools. NCSEER will hold two competitions.

NCSEER will not hold any additional competitions in FY22. If funding is available in FY 2022, the Director intends to use the grant slate developed in FY 2021 for the Special Education Research Grants program to make new awards to high-quality applications that remain on this slate.

*Exemption From Proposed Rulemaking:* Under section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, IES is not subject to section

already have been certified as an MSI and must be on one or more of the following lists:

- Institutions on the Office of Postsecondary Education's FY21 or FY20 lists of Title III and Title V eligible institutions will be considered MSIs.
- HBCUs listed on the Department's FY21 or FY20 lists of Title III and Title V eligible institutions as meeting the criteria of 34 CFR 608.2 will be considered MSIs.

437(d) of the General Education Provisions Act, 20 U.S.C. 1232(d), and is therefore not required to offer interested parties the opportunity to comment on priorities, selection criteria, definitions, and requirements.

*Program Authorities:* 20 U.S.C. 9501 *et seq.* and the American Rescue Plan Act of 2021 (Pub. L. 117-2) Sec. 2010.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 77, 81, 82, 84, 86, 97, 98, and 99. In addition, the regulations in 34 CFR part 75 are applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)–(c), 75.219, 75.220, 75.221, 75.222, 75.230, and 75.708. (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.

*Note:* The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Note:* The open licensing requirement in 2 CFR 3474.20 does not apply for these competitions.

#### II. Award Information

*Types of Awards:* Discretionary grants and cooperative agreements.

*Fiscal Information:* These competitions will be supported with funds appropriated through the ARP, as well as with regular appropriations for IES programs. Note that ARP funds may only be used to support activities that involve "research related to addressing learning loss caused by the coronavirus . . ." Although Congress has not yet enacted an appropriation for FY 2022, IES is inviting applications for these competitions now so that applicants can have adequate time to prepare their applications. The actual level of funding, if any, depends on final congressional action. In addition, the level of available funding may depend on IES provision of additional support for ongoing grants that have been affected by COVID-19. IES may announce additional competitions later in 2021.

*Estimated Range of Awards:* See chart at the end of this notice. The size of the awards will depend on the scope of the projects proposed.

*Estimated Number of Awards:* The number of awards made under each competition will depend on the quality of the applications received for that competition and the availability of funds.

For all competitions, contingent on the availability of funds and the quality of applications, we may make additional awards in FY 2023 from the list of highly-rated unfunded applications from the FY 2022 competitions.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* See chart at the end of this notice.

#### III. Eligibility Information

1. *Eligible Applicants:* Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, nonprofit and for-profit organizations and public and private agencies and institutions of higher education, such as colleges and universities.

For the Research Training in the Education Sciences grant program, eligible applicants vary by program topic. For the Early Career Mentoring Program, applicants must be a minority-serving institution. For the Postdoctoral Research Training Program in the Education Sciences, applicants must be academic institutions located in the United States and its territories that confer doctoral degrees in fields relevant to education. For the Methods Training for Education Researchers program, applicants must be located in the territorial United States and have the ability and capacity to conduct training in scientific research methods. For the Using Longitudinal Data to Support State Education Recovery Policymaking grant program, eligible applicants must be the State agency responsible for the education issue, program, or policy to be examined. Eligible State agencies include the State education agency (SEA) responsible for the State's K-12 sector as well as State agencies responsible for other specific education sectors such as prekindergarten, career and technical education, postsecondary education, and adult education. State agencies may apply alone, or in conjunction with research organizations such as universities and research firms, and/or with other appropriate organizations (such as other State agencies or local education agencies). The State agency must be the grantee and must provide the Principal Investigator.

2. *Cost Sharing or Matching:* These programs do not require cost sharing or matching.

3. *Subgrantees*: Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: Nonprofit and for-profit organizations and public and private agencies and institutions of higher education. The grantee may award subgrants to entities it has identified in an approved application.

#### 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 February 13, 2019 (84 FR 3768) and available at [www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf](http://www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf), which contain requirements and information on how to submit an application.

2. *Other Information*: Information regarding program and application requirements for the competitions will be contained in the currently available IES Application Submission Guide and in the NCER and NCSEF RFAs, which will be available on or before June 30, 2021, on the IES website at: <https://ies.ed.gov/funding/>. The dates on which the application packages for these competitions will be available are indicated in the chart at the end of this notice.

3. *Content and Form of Application Submission*: Requirements concerning the content of an application are contained in the RFA for the specific competition. The forms that must be submitted are in the application package for the specific competition.

4. *Submission Dates and Times*: The deadline date for transmittal of applications for each competition is indicated in the chart at the end of this notice and in the RFAs for the competitions.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review*: These competitions are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

#### V. Application Review Information

1. *Selection Criteria*: For all of its grant competitions, IES uses selection criteria based on a peer review process that has been approved by the National

Board for Education Sciences. The Peer Review Procedures for Grant Applications can be found on the IES website at [https://ies.ed.gov/director/sro/peer\\_review/application\\_review.asp](https://ies.ed.gov/director/sro/peer_review/application_review.asp).

For the 84.305A, 84.305D, 84.305R, and 84.324X competitions, peer reviewers will be asked to evaluate the significance of the application, the quality of the research plan, the qualifications and experience of the personnel, the resources of the applicant to support the proposed activities, and the quality of the dissemination history and dissemination plan. These criteria will be described in greater detail in the RFAs.

For the 84.305B competition, peer reviewers for the early career mentoring program will be asked to evaluate the significance of the application, the quality of the research training plan, the quality of the career development plan, the qualifications and experience of the personnel, the resources of the applicant to support the proposed activities, and the quality of the dissemination history and plan. For the 84.305B competition, peer reviewers for the postdoctoral training programs will be asked to evaluate the significance of the application, the quality of the research training plan, the qualifications and experience of the personnel, and the resources of the applicant to support the proposed activities. For the 84.305B competition, peer reviewers for the methods training programs will be asked to evaluate the significance of the application, the quality of the research training plan, the qualifications and experience of the personnel, the resources of the applicant to support the proposed activities, and the quality of the dissemination history and plan. These criteria are described in greater detail in the RFA.

For the 84.305S competition, peer reviewers will be asked to evaluate the significance of the application, the quality of the research plan, the applicability and availability of the data to be analyzed, and the quality of the plans to disseminate and use the findings in State decision-making. These criteria are described in greater detail in the RFA.

For all IES competitions, applications must include budgets no higher than the relevant maximum award as set out in the relevant RFA. IES will not make an award exceeding the maximum award amount as set out in the relevant RFA.

2. *Review and Selection Process*: We remind potential applicants that in reviewing applications in any discretionary grant competition, IES 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, compliance with the IES policy regarding public access to research, and compliance with grant conditions. IES 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, IES also 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 these competitions, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, IES 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 Grant Award Notification (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. *Grant Administration*: Applicants should budget for an annual meeting of up to three days for project directors to be held in Washington, DC.

4. *Reporting*: (a) If you apply for a grant under one of the competitions announced in this notice, 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 IES. 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 IES under 34 CFR 75.118. IES 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](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

5. *Performance Measures*: To evaluate the overall success of its education research and special education research grant programs, IES annually assesses the percentage of projects that result in peer-reviewed publications and the number of IES-supported interventions with evidence of efficacy in improving learner education outcomes. In addition, NCSER annually assesses the number of newly developed or modified interventions with evidence of promise for improving learner education outcomes. School readiness outcomes include pre-reading, reading, pre-writing, early mathematics, early science, and social-emotional skills that prepare young children for school. Student academic outcomes include learning and achievement in academic content areas, such as reading, writing, math, and science, as well as outcomes that reflect students' successful progression through the education system, such as course and grade completion; high school graduation; and postsecondary enrollment, progress, and completion. Social and behavioral competencies include social and emotional skills, attitudes, and behaviors that are important to academic and post-academic success. Additional education outcomes for students with or at risk of a disability (as defined in the relevant RFA) include developmental outcomes for infants and toddlers (birth to age three) pertaining to cognitive, communicative, linguistic, social, emotional, adaptive, functional, or physical development; and developmental and functional outcomes that improve education outcomes, transition to employment, independent living, and postsecondary education for students with disabilities.

6. *Continuation Awards*: In making a continuation award under 34 CFR

75.253, IES 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; whether a grantee is in compliance with the IES policy regarding public access to research; and if IES 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, IES 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).

## VII. Other Information

*Accessible Format*: On request to the program contact person listed under **FURTHER INFORMATION CONTACT**, Individuals with disabilities can obtain this document and a copy of the RFA 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](http://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](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Mark Schneider**,

*Director, Institute of Education Sciences.*

ALN and name	Application package available	Deadline for transmittal of applications	Estimated range of awards *	Project period	For further information contact
<b>National Center for Education Research (NCER)</b>					
84.305A Education Research <ul style="list-style-type: none"> <li>▪ Career and Technical Education</li> <li>▪ Civics Education and Social Studies.</li> <li>▪ Cognition and Student Learning.</li> <li>▪ Early Learning Programs and Policies.</li> <li>▪ Effective Instruction .....</li> <li>▪ English Learners .....</li> <li>▪ Improving Education Systems.</li> <li>▪ Postsecondary and Adult Education.</li> <li>▪ Literacy .....</li> <li>▪ Science, Technology, Engineering, and Mathematics Education.</li> <li>▪ Social and Behavioral Context for Academic Learning.</li> </ul>	6/30/21	9/9/21	\$100,000 to \$760,000 ....	Up to 5 years ....	Helyn Kim, <i>Helyn.Kim@ed.gov</i> .
84.305B Research Training Programs in the Education Sciences <ul style="list-style-type: none"> <li>▪ Early Career Mentoring Program for MSI Faculty.</li> <li>▪ Postdoctoral Research Training Program in the Education Sciences.</li> <li>▪ Methods Training for Education Researchers.</li> </ul>	6/30/21	9/9/21	\$100,000 to \$312,000 ....	Up to 5 years ....	Katina Stapleton, <i>Katina.Stapleton@ed.gov</i> .
84.305D Statistical and Research Methodology in Education <ul style="list-style-type: none"> <li>▪ Regular</li> <li>▪ Early Career</li> </ul>	6/15/21	8/12/21	\$40,000 to \$300,000 .....	Up to 3 years ....	Phill Gagne, <i>Phill.Gagne@ed.gov</i> .
84.305R Research Grants Focused on Systematic Replication.	6/30/21	9/9/21	\$400,000 to \$900,000 ....	Up to 5 years ....	Christina Chhin, <i>Christina.Chhin@ed.gov</i> .
84.305S Using Longitudinal Data to Support State Education Recovery Policy-making.	6/15/21	8/12/21	\$40,000 to \$333,000 .....	Up to 3 years ....	Allen Ruby, <i>Allen.Ruby@ed.gov</i> .
<b>National Center for Special Education Research (NCSER)</b>					
84.324X-1 Research to Accelerate Pandemic Recovery in Special Education.	6/15/21	8/2/21	\$500,000 to \$1,000,000	Up to 4 years ....	Katherine Taylor, <i>Katherine.Taylor@ed.gov</i> .
84.324X-2 Research to Accelerate Pandemic Recovery in Special Education.	6/15/21	9/9/21	\$500,000 to \$750,000 ....	Up to 4 years ....	Katherine Taylor, <i>Katherine.Taylor@ed.gov</i> .

\* These estimates are annual amounts.

**Note:** The Department is not bound by any estimates in this notice.

**Note:** If you use a TDD or a TTY, call the FRS, toll free, at 1-800-877-8339.

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP21–451–000]

**Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline**

Take notice that on May 25, 2021, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700, filed in the above referenced docket a prior notice pursuant to Section 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act and the blanket certificate issued to Columbia by the Commission in Docket No. CP83–76–000,<sup>1</sup> seeking authorization to eight injection/withdrawal wells, their associated pipelines and appurtenances, located in its Brinker Storage Field in Columbiana County, Ohio. These abandonments will include the abandonment in-place and by-removal of associated pipelines shown in detail on a table in the application. Columbia states that the abandonment will: (1) Reduce public risk of unintended gas release from deteriorating wellheads and pipelines; (2) reduce the risk of customer gas being lost from reservoirs due to deteriorating subsurface conditions; and (3) eliminate the need for future expenditures associated with these assets. Further, Columbia avers that the proposed abandonments will not affect any firm service to any existing customers, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy

Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application should be directed to Sorana Linder, Director, Modernization & Certificates, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, by telephone (832) 320–5209, or by email at [sorana\\_linder@tcenergy.com](mailto:sorana_linder@tcenergy.com).

**Public Participation**

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on August 3, 2021. How to file protests, motions to intervene, and comments is explained below.

**Protests**

Pursuant to section 157.205 of the Commission's regulations under the NGA,<sup>2</sup> any person<sup>3</sup> or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,<sup>4</sup> and must be submitted by the protest deadline, which is August 3, 2021. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

**Interventions**

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the

Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure<sup>5</sup> and the regulations under the NGA<sup>6</sup> by the intervention deadline for the project, which is August 3, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

**Comments**

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 3, 2021. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

**How To File Protests, Interventions, and Comments**

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP21–451–000 in your submission.

<sup>2</sup> 18 CFR 157.205.

<sup>3</sup> Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

<sup>4</sup> 18 CFR 157.205(e).

<sup>5</sup> 18 CFR 385.214.

<sup>6</sup> 18 CFR 157.10.

<sup>1</sup> *Columbia Gas Transmission Corporation* (predecessor to Columbia Gas Transmission, LLC), 22 FERC ¶ 62,029 (1983).



(1) You may file your protest, motion to intervene, and comments by using the Commission’s eFiling feature, which is located on the Commission’s website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. New eFiling users must first create an account by clicking on “eRegister.” You will be asked to select the type of filing you are making; first select General” and then select “Protest”, “Intervention”, or “Comment on a Filing”; or <sup>7</sup>

(2) You can file a paper copy of your submission by mailing it to the address below.<sup>8</sup> Your submission must reference the Project docket number CP21–451–000. Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov).

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: [sorana\\_linder@tcenergy.com](mailto:sorana_linder@tcenergy.com) or 700 Louisiana Street, Suite 700, Houston, Texas 77002–2700. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission’s Office of External Affairs, at (866) 208–FERC, or on the FERC website at [www.ferc.gov](http://www.ferc.gov) using the “eLibrary” link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with

notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

Dated: June 4, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–12153 Filed 6–9–21; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. RP21–889–000]**

**Tucson Electric Power Company and UNS Gas, Inc. v. El Paso Natural Gas Company, LLC; Notice of Complaint**

Take notice that on June 2, 2021, pursuant to Section 5 of the Natural Gas Act<sup>1</sup> and Rule 206 of the Federal Energy Regulatory Commission’s (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2021), Tucson Electric Power Company and UNS Gas, Inc. (Complainants) filed a formal complaint against El Paso Natural Gas Company, LLC (Respondent), alleging that the Respondent’s failure to waive and imposition of Critical Operating Condition charges and penalties for the period February 15, 2021 through February 17, 2021 is unjust and unreasonable, unreasonably punitive, and inconsistent with Commission policy and precedent, all as more fully explained in its complaint.

The Complainants certify that copies of the complaint were served on the contacts listed for Respondent in the Commission’s list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer

and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission’s Home Page (<http://www.ferc.gov>) using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission’s Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on June 22, 2021.

Dated: June 4, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021–12201 Filed 6–9–21; 8:45 am]

**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Notice of Settlement Agreement**

	Project No.
Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, Eagle Creek Land Resources, LLC .....	10482–122
Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, Eagle Creek Land Resources, LLC .....	10481–069

<sup>7</sup> Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission’s website at [www.ferc.gov](http://www.ferc.gov) under the link to Documents and Filings. Using eComment is an easy method for

interested persons to submit brief, text-only comments on a project.

<sup>8</sup> Hand-delivered submissions in docketed proceedings should be delivered to Health and

Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

<sup>1</sup> 15 U.S.C. 717d.

	Project No.
Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, Eagle Creek Land Resources, LLC .....	9690-115

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project Nos.:* P-10482-122; P-10481-069; and P-9690-115.

c. *Date Filed:* May 28, 2021.

d. *Applicants:* Eagle Creek Hydro Power, LLC; Eagle Creek Water Resources, LLC; and Eagle Creek Land Resources, LLC (collectively referred to as Eagle Creek).

e. *Name of Projects:* Swinging Bridge Hydroelectric Project (P-10482), Mongaup Falls Hydroelectric Project (P-10481), and Rio Hydroelectric Project (P-9690).

f. *Location:* The Swinging Bridge Hydroelectric Project is located on the Mongaup River and Black Lake Creek in Sullivan County, New York. The Mongaup Falls Hydroelectric Project is located on the Mongaup River and Black Brook in Sullivan County, New York. The Rio Hydroelectric Project is located on the Mongaup River in Sullivan and Orange Counties, New York. The projects do not occupy any federal land.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Jody J. Smet, Vice President Regulatory Affairs, 2 Bethesda Metro Center, Suite 1330, Bethesda, MD 20814; Telephone (804) 739-0654, email—[jody.smet@eaglecreekre.com](mailto:jody.smet@eaglecreekre.com).

i. *FERC Contact:* Nicholas Ettema, (312) 596-4447 or [nicholas.ettema@ferc.gov](mailto:nicholas.ettema@ferc.gov).

j. *Deadline for filing comments:* Comments are due within 20 days of the notice. Reply comments due within 30 days of the notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions

sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number (e.g., P-10482).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Eagle Creek filed an Offer of Settlement (Settlement Agreement) on behalf of itself, the New York State Department of Environmental Conservation, U.S. Fish and Wildlife Service, National Park Service, U.S.G.S Office of the Delaware River Master, American Whitewater, Appalachian Mountain Club, Kayak and Canoe Club of New York, Chapin Estate Homeowners Association, Homeowners of Toronto, Inc., Iroquois Hunting and Fishing Club, Inc., Swinging Bridge Property Owners Association, Trout Unlimited—New York State Council, and the Woodstone Lake Development, LLC. The Settlement Agreement includes protection, mitigation, and enhancement measures addressing project operation, minimum flows, dissolved oxygen, Delaware River dwarf wedgemussel, downstream fish passage, upstream passage of American eel, and management plans for shorelines, recreation, whitewater flows, bald eagles, northern long-eared bat, invasive plants, and historic properties. Eagle Creek requests that the measures in the Settlement Agreement be incorporated as license conditions, without modification, in any license issued for each project. The signatories to the Settlement Agreement also request a 50-year license term for each project.

1. A copy of the Settlement Agreement is available for review on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the

last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support.

Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to these projects or other pending projects. For assistance, contact FERC Online Support.

Dated: June 4, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-12152 Filed 6-9-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER21-2076-000]

#### **Bulb US, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of Bulb US LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 24, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor

must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: June 4, 2021.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2021-12204 Filed 6-9-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AD21-10-000]

#### Modernizing Electricity Market Design; Notice Inviting Post-Technical Conference Comments

On May 25, 2021, the Federal Energy Regulatory Commission (Commission) convened a technical conference to discuss resource adequacy, state policies and ISO-New England Inc.'s markets.

All interested persons are invited to file post-technical conference comments to address issues raised during the technical conference and identified in the Supplemental Notice of Technical Conference issued May 17, 2021. For reference, the questions included in the Supplemental Notice are included

below. Commenters need not answer all of the questions but are encouraged to organize responses using the numbering and order in the below questions. Commenters are also invited to reference material previously filed in this docket but are encouraged to avoid repetition or replication of previous material. Comments are due 45 days from the date of this Notice.

Comments may be filed electronically via the internet.<sup>1</sup> Instructions are available on the Commission's website <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, (202) 502-8659.

For more information about this Notice, please contact: David Rosner (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8479, [David.Rosner@ferc.gov](mailto:David.Rosner@ferc.gov).

Meghan O'Brien (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6137, [Meghan.O'Brien@ferc.gov](mailto:Meghan.O'Brien@ferc.gov).

Dated: June 4, 2021.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

#### Post-Technical Conference Questions for Comment

##### 1. Relationship Between State Policies and ISO New England Inc.'s Markets

a. In October 2020, the New England States Committee on Electricity (NESCOE) released a vision statement that called for ISO-NE to provide an appropriate level of state involvement in wholesale market design and implementation.<sup>2</sup> Please provide an update on the discussions in the region since the vision statement was released.

b. Please explain how states are currently involved in market design and implementation processes. How are states' perspectives considered in these processes? How is information shared with states related to these processes? What is the appropriate role for New England states with respect to ISO-NE capacity market reforms?

c. New England Power Pool (NEPOOL), in coordination with NESCOE and ISO-NE representatives, launched the "New England's Future Grid Initiative" in two parallel

processes to (1) define and assess the future state of the region's power system; and (2) explore and evaluate potential market frameworks that could be pursued to accommodate state policies focused on decarbonization.<sup>3</sup> What is the current status of each of these stakeholder processes?

d. Many New England states have established long-term policy goals and/or statutory requirements to reduce greenhouse gas emissions and increase clean energy generation. Consistent with these goals, several states have instituted programs to promote the development of renewable energy resources and to retain existing zero-emitting generation resources. How do the current ISO-NE market rules affect implementation of existing or proposed state policies? If states have differing policy goals, how should these be accommodated in the ISO-NE capacity market? How do one state's actions to shape the resource mix affect other states? Should such effects be addressed, and if so, how?

e. Is ISO-NE's existing capacity market design, including the Competitive Auctions with Sponsored Policy Resources (CASPR) framework effective in ensuring resource adequacy at just and reasonable rates? Why or why not? Is it compatible with achieving New England states' policies? Given the small quantity of capacity cleared through the substitution auction, is CASPR achieving its goals? Is CASPR's current design durable? Why, or why not?

##### 2. Short-Term Options and Complementary Potential Market Changes To Accommodate State Policies in ISO-NE

a. Should ISO-NE's capacity market design, including the CASPR framework, change to better accommodate state policies? If so, how?

b. As the resource mix in ISO-NE continues to evolve, what new challenges are presented? Are the needs of the evolving resource mix better addressed in the capacity market or the energy and ancillary services markets, or are changes needed in both? Please explain.

c. At the March 23, 2021 technical conference,<sup>4</sup> panelists suggested that

<sup>3</sup> ISO-NE, New England's Future Grid Initiative Key Project, <https://www.iso-ne.com/committees/key-projects/new-englands-future-grid-initiative-key-project/>. See also Dr. Frank Felder, *NEPOOL's Pathways to the Future Grid Process Project Report n.1* (Jan. 2021), [https://nepool.com/wp-content/uploads/2021/01/NPC\\_20210107\\_Felder\\_Report\\_on\\_Pathways\\_rev1.pdf](https://nepool.com/wp-content/uploads/2021/01/NPC_20210107_Felder_Report_on_Pathways_rev1.pdf).

<sup>4</sup> See Supplemental Notice of Technical Conference on Resource Adequacy in the Evolving

<sup>1</sup> See 18 CFR 385.2001(a)(1)(iii) (2020).

<sup>2</sup> NESCOE, New England States' Vision for a Clean, Affordable, and Reliable 21st Century Regional Electric Grid, <http://nescoe.com/resource-center/vision-stmt-oct2020/>.

both short-term and long-term reforms to aspects of ISO-NE's capacity, energy, and ancillary services markets could be needed if CASPR and the Offer Review Trigger Prices (ORTPs) are modified or eliminated.

i. What, if any, are the short-term and long-term challenges of removing CASPR and the ORTPs from ISO-NE's capacity market? What market design changes, if any, would be necessary to preserve the capacity market's ability to ensure resource adequacy? If changes are necessary, how quickly would ISO-NE need to implement short-term changes following the removal of CASPR and ORTP?

ii. What other specific modifications to ISO-NE's capacity market rules may be necessary? For example, should capacity accreditation rules for various resource types, the shape of the capacity market demand curve, the net cost of new entry estimates, or mechanisms to ensure fuel security, among others, be revised and if so why, and how? Approximately how long would it take ISO-NE and stakeholders to develop and implement each additional needed reform? Assuming any such modifications are necessary, which should be prioritized in the short-term, and which should be pursued in the long-term?

iii. Some panelists expressed concerns that ORTPs are necessary to prevent cost shifts between New England states. Please explain whether and if so, how these cost shifts would occur if CASPR and the ORTPs were eliminated. Is there a way to mitigate such an effect? Please explain. Additionally, please discuss the extent to which certain impacts are unavoidable in a regional market where participating resources are located in multiple states.

### 3. Long-Term Options and Centralized Procurement of Clean Energy

a. What benefits would a centralized clean procurement mechanism in ISO-NE provide to the ISO-NE states and the ISO-NE markets? What would be the goals of such approaches and what are important design considerations in developing any potential market mechanism? What are the downsides of pursuing such constructs? What concerns regarding potential undue discrimination may arise from implementing such new market constructs, if any?

b. What are potential challenges to developing the new market constructs

discussed in this panel (e.g., would interstate compacts be required)? How could those challenges be overcome? For example, New England states have policies that support different types of resources (e.g., offshore wind). Could a standard product be developed and centrally procured in ISO-NE-administered markets to meet these diverse state policy goals? Given the differences in state policies, is it possible to define products that resources could provide (e.g., zero-emission generation) and incorporate the procurement of those products into Commission-jurisdictional markets?

c. Stakeholder discussions to date have focused on the Forward Clean Energy Market and Integrated Clean Capacity Market as potential frameworks. What are the key design features of these proposals? What are the advantages and disadvantages of these approaches?

d. Given that many state policy goals target electricity generation (e.g., Renewable Portfolio Standards that target a percentage of electric loads), would it be more effective to develop such a construct within the energy and ancillary services markets?

[FR Doc. 2021-12200 Filed 6-9-21; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER21-2048-000]

#### Sac County Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sac County Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of

future issuances of securities and assumptions of liability, is June 24, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: June 4, 2021.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2021-12205 Filed 6-9-21; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 8015-012]

#### North Eastern Wisconsin Hydro, LLC; Notice of Application for Temporary Amendment and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Application Type*: Temporary amendment of exemption.

b. *Project No.*: 8015–012.

c. *Date Filed*: May 28, 2021.

d. *Applicant*: North Eastern Wisconsin Hydro, LLC.

e. *Name of Project*: Shawano Paper Mills Dam Project.

f. *Location*: The project is located on the Wolf River in Shawano County, Wisconsin.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. David Fox, Eagle Creek Renewable Energy, 2 Bethesda Metro Center, Suite 1330, Bethesda, Maryland 20814; (201) 306–5616; [david.fox@eaglecreekre.com](mailto:david.fox@eaglecreekre.com).

i. *FERC Contact*: Christopher Chaney, (202) 502–6778, [christopher.chaney@ferc.gov](mailto:christopher.chaney@ferc.gov).

j. Deadline for filing comments, motions to intervene, and protests is 15 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–8015–012. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that

may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request*: The exemptee requests authorization to increase the normal target impoundment elevation from 802.5 feet mean sea level (msl) to a target elevation of 802.9 feet msl year-round for two years, while continuing to operate the project within the authorized elevation range of 801.83 feet msl and 803.17 feet msl. The exemptee states the amendment is necessary to address concerns related to recreation and boater safety in a timely manner, while allowing time to conduct additional consultation and studies, and prepare an application for a permanent long-term solution.

l. *Locations of the Application*: 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 website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. Agencies may obtain copies of the application directly from the applicant. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll free, (866) 208–3676 or TTY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

o. *Filing and Service of Responsive Documents*: All filings must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 385.2010.

Dated: June 4, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021–12157 Filed 6–9–21; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP21–888–000]

#### City of Las Cruces, New Mexico and City of Mesa, Arizona v. El Paso Natural Gas Company, LLC; Notice of Complaint

Take notice that on June 2, 2021, pursuant to Section 5 of the Natural Gas Act<sup>1</sup> and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2021), City of Las Cruces, New Mexico, and the City of Mesa, Arizona (Complainants) filed a formal complaint against El Paso Natural Gas Company, LLC (Respondent), alleging that Respondent's failure to waive operational flow order penalties incurred on and after February 15, 2021 is unreasonable, unduly discriminatory, and inconsistent with Commission policy and precedent, all as more fully explained in its complaint.

The Complainants certify that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in

<sup>1</sup> 15 U.S.C. 717d.

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on June 22, 2021.

**Debbie-Anne A. Reese,**  
*Deputy Secretary.*

[FR Doc. 2021-12202 Filed 6-9-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER21-2077-000]

#### **Bulb Energy US Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of Bulb Energy US Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 24, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Dated: June 4, 2021.

**Debbie-Anne A. Reese,**  
*Deputy Secretary.*

[FR Doc. 2021-12203 Filed 6-9-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP21-31-000]

#### **Texas Eastern Transmission, L.P.; Notice of Availability of the Environmental Assessment for the Proposed Perulack Compressor Units Replacement Project**

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Perulack Compressor Units Replacement Project, proposed by Texas Eastern Transmission, LP (Texas Eastern) in the above-referenced docket. Texas Eastern requests authorization to replace four existing natural gas-fired turbine compressor engines with two new units and appurtenant facilities at its existing Perulack Compressor Station in Juniata County, Pennsylvania.

The EA assesses the potential environmental effects of the construction and operation of the Perulack Compressor Units Replacement Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The project includes the following facilities:

- Two new 18,100-horsepower (hp) Solar Titan 130 natural gas-fired turbines;
- related software controls that would limit the total hp of each compressor unit to 17,400 hp to be consistent with current certificated capacity of the compressor station of 34,800 hp;

- one new 585-hp Waukesha VGF-H24GL emergency generator;
- a new compressor building to house the two new compressor units;
- conversion of an existing compressor building into a storage warehouse;
- a new service entry building, two new electric buildings, two natural gas-fired heaters, two space heaters, four new filter/separator vessels, and six new gas coolers;
- a new stormwater management retention basin; and

Removal of four natural gas fired centrifugal turbine compressor units and the associated auxiliary piping and equipment and two generators.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website ([www.ferc.gov](http://www.ferc.gov)), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select "General Search" and enter the docket number in the "Docket Number" field (*i.e.*, CP21-31-000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on July 5, 2021.

For your convenience, there are three methods you can use to file your comments with the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov). Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to *FERC Online*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to *FERC Online*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21-31-000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at <https://www.ferc.gov/ferc-online/ferc-online/how-guides>.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC

website ([www.ferc.gov](http://www.ferc.gov)) using the *eLibrary* link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: June 4, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-12154 Filed 6-9-21; 8:45 am]

BILLING CODE 6717-01-P

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## EXPORT-IMPORT BANK

### Privacy Act of 1974; System of Records

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice of new system of records.

**SUMMARY:** The Export-Import Bank of the United States (EXIM) proposes to add a new electronic system of records, EXIM CRM (Customer Relationship Management), subject to the Privacy Act of 1974, as amended. This notice is necessary to meet the requirements of the privacy act which is to publish in the **Federal Register** a notice of the existence and character of records maintained by the agency. Included in this notice is the system of records notice (SORN) for EXIM CRM.

**DATES:** Comments must be received on or before July 12, 2021 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on [www.regulations.gov](http://www.regulations.gov) or by mail to Tomeka Wray, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

**FOR FURTHER INFORMATION CONTACT:** Tomeka Wray, by email [Tomeka.Wray@exim.gov](mailto:Tomeka.Wray@exim.gov), or telephone 202-565-3996, or by mail Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

**SUPPLEMENTARY INFORMATION:** EXIM is establishing a new system of records, EXIM CRM. The system will be used to help EXIM business development and customer service operations essential to its mission of supporting American jobs



by facilitating the export of U.S. goods and services. EXIM CRM is comprised of two integrated, cloud-based applications, Salesforce and HubSpot.

**SYSTEM NAME AND NUMBER:**

EXIM CRM, EIB 21-01.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

EXIM CRM consists of two cloud-based applications—Salesforce and HubSpot. The Salesforce application and data is hosted in Salesforce Government Cloud. The HubSpot application and data are hosted in Amazon Web Services (AWS) and Google Cloud Platform (GCP).

**SYSTEM MANAGER(S):**

Senior Vice President, Office of Small Business, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Export-Import Bank requests the information in this application under the following authorizations:

Authority of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635 *et seq.*), Executive Order 9397 as Amended by Executive Order 13478 signed by President George W. Bush on November 18, 2008, Relating to Federal Agency Use of Social Security Numbers.

**PURPOSE(S) OF THE SYSTEM:**

This system will enable EXIM business development and customer service operations essential to its mission of supporting American jobs by facilitating the export of U.S. goods and services. Information in the system will be used to manage relationships and track interactions with companies and their representatives who are potential, current, or former customers or that are also involved in an EXIM financing transaction (*e.g.*, as a sponsor or an advisor). It will also be used to manage relationships and track interactions with partner organizations and agencies and their representatives (registered insurance brokers, commercial lenders, and members of the Regional Export Promotion Program) as well as other organizations and agencies whom EXIM works with in supporting U.S. exporters (*e.g.*, other government agencies and nonprofit business development organizations). Additionally, EXIM CRM allows designated personnel from specific partner organizations to log in through Salesforce's Partner Portal to

access resources and limited information on potential or current clients that helps them support those clients. EXIM CRM is also used for email outreach and to host landing pages and contact forms used by the public when requesting information or follow up from EXIM. Data from this system may also be used to track, evaluate, and improve EXIM's products and operations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Covered individuals are:

- Staff or representatives of companies that are potential, current, or former customer or that are also involved in an EXIM deal (*e.g.*, as a sponsor or an advisor).
- Staff or representatives of EXIM partner organizations (registered insurance brokers, commercial lenders, members of EXIM's Regional Export Promotion Program).
- Staff or representatives of other organizations EXIM works with in supporting U.S. exporters including local, state, and federal government agencies and nonprofit business development organizations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual records in EXIM CRM include full name, company name, business address, phone number, email address, race, and ethnicity.

**RECORD SOURCE CATEGORIES**

The primary source of information is from the individual about whom the record is maintained. Additional sources of information are EXIM's partner organizations and other government agencies.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures that are generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside EXIM as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

- a. To commercial lenders who issue loans covered by EXIM guarantees, for the purpose of assisting current/potential EXIM customers apply for or service an EXIM guaranteed loan;
- b. To registered insurance brokers who distribute EXIM Export Credit Insurance policies, for the purpose of assisting current/potential EXIM customers apply for or manage an EXIM policy;

c. To a Federal agency partner including the Department of Commerce (DOC), Small Business Administrations (SBA), U.S. Trade & Development Agency (USTDA), and Development Finance Corporation (DFC) for the purpose of assisting current/potential EXIM customers, or companies that do not qualify for EXIM financing, with export financing or other export/trade support services;

d. To a state government, local government, or non-profit business development organization partners for the purpose of assisting current/potential EXIM customers, or companies that do not qualify for EXIM financing, with export/trade support services;

e. To EXIM contractors, agents, or others performing work on a contract, service, cooperative agreement, job, or other activity for EXIM and who have a need to access the information in the performance of their duties or activities for EXIM;

f. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature;

g. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when EXIM or other Agency representing EXIM determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

h. To any component of the Department of Justice for the purpose of representing EXIM, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent;

i. To a Congressional office in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains;

j. To the National Archives and Records Administration (NARA) for records management purposes;

k. To appropriate agencies, entities, and persons when (1) EXIM suspects or has confirmed that there has been a breach of the system of records; (2) EXIM has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, EXIM, 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 EXIM's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

l. To another Federal agency or Federal entity, when EXIM 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.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS.**

Records are stored digitally in encrypted format in the Salesforce and HubSpot cloud environments.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records may be retrieved by business entity name, individual name, or email address.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

All records are retained and disposed of in accordance with EXIM directives, EXIM's Record Schedule DAA-GRS2017-0002-0002, and General Records Schedule GRS 6.5 Item 020.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Information will be stored in electronic format within EXIM CRM. EXIM CRM has configurable, layered data sharing and permissions features to ensure users have proper access. Access to Salesforce and HubSpot is restricted to EXIM personnel who need it for their job. Authorized users have access only to the data and functions required to perform their job functions. Designated personnel at specific lender, insurance broker, and Regional Export Promotion Program (REPP) partner organizations are granted limited access to EXIM CRM through Salesforce's Partner Portal. This access is managed via Salesforce's and HubSpot's System Administration, User, and security functions.

Salesforce Government Cloud is compliant with the Federal Risk and Authorization Management Program (FedRAMP). The PII information in EXIM CRM will be encrypted and stored in place, and HTTPS protocol will be employed in accessing Salesforce.

HubSpot is hosted in AWS and GCP environments that are FedRAMP compliant, and ISO 27001 certified. The

PII information in EXIM CRM will be encrypted and stored in place, and HTTPS protocol will be employed in accessing HubSpot.

**RECORD ACCESS PROCEDURE:**

Requests to access records under the Privacy Act must be submitted in writing and signed by the requestor. Requests should be addressed to the Freedom of Information and Privacy Office, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The request must comply with the requirements of 12 CFR 404.14.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest and/or amend records under the Privacy Act must submit a request in writing. The request must be signed by the requestor and should be addressed to the Freedom of Information and Privacy Office, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The request must comply with the requirements of 12 CFR 404.14.

**NOTIFICATION PROCEDURES:**

Individuals seeking to be notified if this system contains a record pertaining to himself or herself must submit a request in writing. The request must be signed by the requestor and should be addressed to the Freedom of Information and Privacy Office, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571. The request must comply with the requirements of 12 CFR 404.14.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY**

Not Applicable.

**Bassam Doughman,**

*IT Specialist.*

[FR Doc. 2021-12117 Filed 6-9-21; 8:45 am]

**BILLING CODE 6690-01-P**

**FARM CREDIT SYSTEM INSURANCE CORPORATION**

**Regular Meeting; Farm Credit System Insurance Corporation Board**

**AGENCY:** Farm Credit System Insurance Corporation.

**ACTION:** Notice, regular meeting.

**SUMMARY:** Notice is hereby given, in accordance with the provisions of Article VI of the Bylaws of the Farm Credit System Insurance Corporation (FCSIC), of a forthcoming regular

meeting of the Board that a regular meeting of the Board of Directors of FCSIC will be held.

**DATES:** June 17, 2021, at 10:00 a.m. EDT, until such time as the Board may conclude its business. *Note: Because of the COVID-19 pandemic, we will conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions below for board meeting visitors.*

**ADDRESSES:** To observe the open portion of the virtual meeting, go to *FCSIC.gov*, select "News & Events," then "Board Meetings." There you will find a description of the meeting and "Instructions for board meeting visitors." See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

**FOR FURTHER INFORMATION CONTACT:** Dale Aultman, Secretary to the Board of the Farm Credit System Insurance Corporation, (703) 883-4009. TTY is (703) 883-4056.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public and parts will be closed. If you wish to observe the open portion, follow the instructions above in the **ADDRESSES** section at least 24 hours before the meeting. *Please note that this meeting begins at 10:00 a.m. EDT with a session that is closed to the public. You may join this meeting at 10:45 a.m. EDT. We will begin the open session promptly at 11:00 a.m. EDT.*

*Assistance:* If you need assistance for accessibility reasons or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883-4009. The matters to be considered at the meeting are as follows:

*A. Closed Session*

- *Report on Insurance Risk/Premium Risk Factors*

*B. Approval of Minutes*

- March 18, 2021

*C. Quarterly Business Reports*

- *FCSIC Financial Reports*
- *Report on Insured Obligations*
- *Report on Annual Performance Plan*

*D. New Business*

- *Mid-Year Review of Insurance Premium Rates*

Dated: June 7, 2021.

**Dale Aultman,**

*Secretary, Farm Credit System Insurance Corporation.*

[FR Doc. 2021-12187 Filed 6-9-21; 8:45 am]

**BILLING CODE 6705-01-P**

**FEDERAL RESERVE SYSTEM****Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than June 25, 2021.

*A. Federal Reserve Bank of Minneapolis* (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *The Amended and Restated Kermit J. Zaffke aka John Zaffke Revocable Trust, and The Amended and Restated Karen J. Zaffke Revocable Trust, Karen J. Zaffke and Kermit J. Zaffke, as co-trustees of both trusts and all of Green Valley, Arizona*; as a group acting in concert to retain voting shares of Randall Bancorp, Inc., and thereby indirectly retain voting shares of Randall State Bank, both of Randall, Minnesota.

*B. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President), 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *F. Addison Jones as trustee of the F. Addison Jones Survivor Trust and the Marion A Jones Descendant Trust, Grinnell State Bank and F. Austin Jones as co-trustees of the David A. Jones Irrevocable Trust and the F. Austin Jones Irrevocable Trust, Fitzpatrick A Jones, David Aric Jones, and Alyson*

*Marie Jones, all of Grinnell, Iowa; Kelsey Megan McCulley, Wellman, Iowa; Anthony Joseph Jones, Cumming, Iowa; and Miranda Austin Bradberry, Tiffin, Iowa*; to become members of the Jones Family Control Group, a group acting in concert, to retain voting shares of Grinnell Bancshares, Inc., and thereby indirectly retain voting shares of Grinnell State Bank, both of Grinnell, Iowa.

Board of Governors of the Federal Reserve System, June 7, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021-12169 Filed 6-9-21; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[OMB Control No. 9000-0062; Docket No. 2021-0053; Sequence No. 9]

**Information Collection; Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements**

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and an extension concerning certain Federal Acquisition Regulation (FAR) part 36 construction contract requirements. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through September 30, 2021. DoD, GSA, and NASA propose that OMB extend its approval for use for

three additional years beyond the current expiration date.

**DATES:** DoD, GSA, and NASA will consider all comments received by August 9, 2021.

**ADDRESSES:** DoD, GSA, and NASA invite interested persons to submit comments on this collection through <https://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

*Instructions:* All items submitted must cite OMB Control No. 9000-0062, Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two-to-three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hawes, Procurement Analyst, at telephone 202-969-7386, or [jennifer.hawes@gsa.gov](mailto:jennifer.hawes@gsa.gov).

**SUPPLEMENTARY INFORMATION:****A. OMB Control Number, Title, and any Associated Form(s)**

9000-0062, Certain Federal Acquisition Regulation Part 36 Construction Contract Requirements.

**B. Need and Uses**

The Department of Defense, General Services Administration, and National Aeronautics and Space Administration are combining OMB Control Nos. for the FAR-by-FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision and extension of OMB Control No. 9000-0062 and combines it with the previously approved information collections under OMB Control Nos. 9000-0058 and 9000-0060 with the new title "Certain Federal Acquisition

Regulation Part 36 Construction Contract Requirements.” Upon approval of this consolidated information collection, OMB Control Nos. 9000–0058 and 9000–0060 will be discontinued. The burden requirements previously approved under the discontinued numbers will be covered under OMB Control No. 9000–0062.

This clearance covers the information that contractors must submit to comply with the following FAR part 36 requirements:

- *FAR 52.236–5, Material and Workmanship.* This clause requires the contractor to obtain contracting officer approval of the machinery, equipment, material, or articles to be incorporated into the work. The contractor’s request must include: The manufacturer’s name, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment; and full information concerning the material or articles. When directed by the contracting officer, the contractor must submit sufficient information on and, in some cases, samples of the items requiring approval. The contracting officer uses this information to determine whether the machinery, equipment, material, or articles meet the standards of quality specified in the contract. A contracting officer may reject work if the contractor installs machinery, equipment, material, or articles in the work without obtaining the contracting officer’s approval.

- *FAR 52.236–13, Accident Prevention, Alternate I.* This alternate to the basic clause requires the contractor to submit a written proposed plan to provide and maintain work environments and procedures that will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and control costs in the performance of this contract. The plan must include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards. The contracting officer and technical representatives analyze the Accident Prevention Plan to determine if the proposed plan will satisfy the safety requirements identified in the contract, to include certain provisions of the Occupational Safety and Health Act and applicable standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910.

- *FAR 52.236–15, Schedules for Construction Contracts.* This clause requires the contractor to prepare and submit to the contracting officer for approval three copies of a practicable schedule showing the order in which the contractor proposes to perform the work, and the dates on which the contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The contracting officer uses this information to monitor progress under a Federal construction contract when other management approaches for ensuring adequate progress are not used.

### C. Annual Burden

*Respondents:* 4,412.

*Total Annual Responses:* 15,352.

*Total Burden Hours:* 12,034.

*Obtaining Copies:* Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite OMB Control No. 9000–0062, Certain Federal Acquisition Regulation Part 36 Construction Contracts Requirements.

**Janet Fry,**

*Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2021–12135 Filed 6–9–21; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day–21–0314; Docket No. CDC–2021–0056]

#### Proposed Data Collections 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 and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a

proposed information collection project titled The National Survey of Family Growth (NSFG), designed to provide nationally representative, scientifically credible data on factors related to birth and pregnancy rates, family formation and dissolution patterns, and reproductive health.

**DATES:** CDC must receive written comments on or before August 9, 2021.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2021–0056 by any of the following methods:

- *Federal eRulemaking Portal:* [Regulations.gov](https://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–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to [Regulations.gov](https://www.regulations.gov).

*Please note:* Submit all Comments through the Federal eRulemaking portal ([regulations.gov](https://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–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: [omb@cdc.gov](mailto: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**

The National Survey of Family Growth (NSFG)—(OMB Control No. 0920–0314, Exp. 06/30/2021)—Reinstatement—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on “family formation, growth, and dissolution,” as well as “determinants of health” and “utilization of health care” in the United States. This clearance request includes the data collection in 2022–2024 for the continuous National Survey of Family Growth (NSFG).

The NSFG was conducted periodically between 1973 and 2002, continuously in 2006–2010, and after a break of 15 months, continuously in 2011–2019, by the National Center for Health Statistics (NCHS/CDC). Each year, about 13,500 households will be screened, with about 5,000 participants interviewed annually. Participation in the NSFG is completely voluntary and confidential. Interviews are expected to average 50 minutes for males and 75 minutes for females. The response rate during the 2011–2019 data collection period ranged from 64.5% to 74.0%, and the cumulative response rate for this eight-year fieldwork period was 67.7%.

The NSFG program produces descriptive statistics which document factors associated with birth and pregnancy rates, including contraception, infertility, marriage, cohabitation, and sexual activity, in the US household population 15–49 years (15–44 prior to 2015), as well as behaviors that affect the risk of HIV and other sexually transmitted diseases (STD). The survey also disseminates statistics on the medical care associated with contraception, infertility, pregnancy, and related health conditions.

NSFG data users include the DHHS programs that fund the survey, including CDC/NCHS and 11 others within the Department of Health and Human Services:

- Eunice Kennedy Shriver National Institute for Child Health and Human Development (NIH/NICHD)
- Office of Population Affairs (OPA)

- Children’s Bureau in the Administration for Children and Families (ACF/CB)
- Office of Planning, Research, and Evaluation (ACF/CB)
- Office on Women’s Health (OASH/OWH)
- CDC’s Division of HIV/AIDS Prevention (CDC/NCHHSTP/DHAP)
- CDC’s Division of STD Prevention (CDC/NCHHSTP/DSTDP)
- CDC’s Division of Adolescent and School Health (CDC/NCHHSTP/DASH)
- CDC’s Division of Reproductive Health (CDC/NCCDPHP/DRH)
- CDC’s Division of Cancer Prevention and Control (CDC/NCCDPHP/DCPC)
- CDC’s Division of Violence Prevention (CDC/NCIPC/DVP)

The NSFG is also used by state and local governments (primarily for benchmarking to national data); private research and action organizations focused on men’s and women’s health, child well-being, and marriage and the family; academic researchers in the social and public health sciences; journalists, and many others.

This submission requests approval to reinstate NSFG data collection for three years. The reinstatement request includes the conduction of several methodological studies designed to improve the efficiency and validity of NSFG data collection for the purposes described above. The total estimated annualized time burden to respondents is 6,119 hours. There is no cost to respondents other than their time.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Respondents	Form	Number of responses	Responses per respondent	Average burden/response (in hours)	Total burden hours
Household member .....	Screener Interview .....	13,500	1	3/60	675
Household Female 15–49 years of age .....	Female Interview .....	2,750	1	75/60	3,438
Household Male 15–49 years of age .....	Male Interview .....	2,250	1	50/60	1,875
Household member .....	Screener Verification .....	1,500	1	2/60	50
Household Individual 15–49 years of age .....	Main Interview Verification .....	500	1	5/60	42
Household Female 15–49 years of age .....	Respondent debriefing questions about calendar.	150	1	3/60	8
Household member .....	Phase 4 nonresponse follow-up questions .....	375	1	5/60	31
<b>Total .....</b>					<b>6,119</b>

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2021–12210 Filed 6–9–21; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day–21–21FJ; Docket No. CDC–2021–0054]

#### 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 and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Program Evaluation of CDC's Core State Injury Prevention Program. The proposed project is intended to assess both recipient-level and program-level outcomes associated with the NCIPC's Core SIPP funded state injury prevention program.

**DATES:** CDC must receive written comments on or before August 9, 2021.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2021–0054 by any of the following methods:

- *Federal eRulemaking Portal:* [Regulations.gov](https://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–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to [Regulations.gov](https://www.regulations.gov).

*Please note:* Submit all comments through the Federal eRulemaking portal ([regulations.gov](https://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–

D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: [omb@cdc.gov](mailto: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

##### Program Evaluation of CDC's Core State Injury Prevention Program—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC)

##### Background and Brief Description

CDC requests OMB approval for three years for this new data collection. Approval is requested to collect information from awardees funded under the Core State Injury Prevention Program cooperative agreement, hereafter known as Core SIPP. This program is a new initiative. As part of the annual program evaluation data collection, recipients will submit data

on enhancements in program implementation capacity, leveraged resources/funds through economic indicators, challenges and successes, programmatic improvements, and impact through interviews. Finally, awardees will annually submit injury and violence prevention surveillance data using an Excel-based Injury Indicator Spreadsheets and Special Emphasis Reports.

Information to be collected will provide crucial data for program evaluation and provide CDC with the ability to respond in a timely manner to requests for information about the program from the Department of Health and Human Services (DHHS), the White House, and Congress. It will also provide increased capacity, help understand how the cooperative agreement increases potential sustainability though improved capacity, provide data-driven technical assistance, and disseminate the most current surveillance data on unintentional and intentional injuries.

Authority for CDC's National Center for Injury Prevention and Control (NCIPC) to collect these data is granted by Section 301 of the Public Health Service Act (42 U.S.C. 241). This Act gives federal health agencies, such as CDC, broad authority to collect data and participate in other public health activities, including this type of program implementation evaluation. The Core SIPP evaluation will collect several types of information from recipients over the course of the funding cycle. This information will be used to:

- (1) Evaluate and track outcomes at the recipient- and program-levels as they relate to injury prevention-focused infrastructure development, surveillance system development and use, and partnerships, to prevent Adverse Childhood Experiences (ACEs), Traumatic Brain Injury (TBI), and transportation-related injuries. Recipient- and program-level identification of disproportionately affected populations and subsequent public health actions taken to address injury-related health disparities will also be assessed.

- (2) Identify technical assistance needs of individual recipients and this recipient cohort, so that the CDC team can appropriately deploy resources to support recipients.

- (3) Identify practice-based evidence for injury prevention public health actions to advance the field through future partnerships, program design, and publications.

(4) Inform continuous quality improvement activities over the course of the funding period, to include quarterly and annual strategic planning

for current and later iterations of this program under future funding. CDC requests OMB approval for an estimated 655 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)
Core SIPP Program Awardees .....	Implementation Capacity Development Rubric.	23	1	2	46
	Economic Indicators .....	23	1	1	23
	Recipient-level Group Interviews .....	23	1	1.5	35
	Injury Indicators Spreadsheet .....	23	1	5	107
	Emergency Department Injury Indicators Spreadsheet.	23	1	5	107
	Hospital Discharge Injury Indicators Spreadsheet.	23	1	5	107
	Special Emphasis Reports .....	23	1	10	230
Total .....	.....	.....	.....	.....	655

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021-12211 Filed 6-9-21; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-21-21BL]

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 “Evaluation of the Overdose Data to Action Technical Assistance Hub” 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 December 11, 2020 to obtain comments from the public and affected agencies. CDC did not receive 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](http://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

Evaluation of the Overdose Data to Action Technical Assistance Hub—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

The Division of Overdose Prevention (DOP), at Centers for Disease Control and Prevention (CDC) requests a three-year OMB approval to support the evaluation of technical assistance (TA) provided for the Overdose Data to Action (OD2A) program. OD2A is a cooperative agreement (CDC-RFA-CE19-1904) funded in 2019 to focus on comprehensive and interdisciplinary opioid overdose prevention efforts in 47 state health departments, 16 localities, Puerto Rico, Washington DC, and the North Mariana Islands. This program consists of two required components—a surveillance component and a prevention component. OD2A recipients implement a combination of activities across 10 strategies within these components in order to gain access to high quality, complete, and timelier data on opioid prescribing and overdoses and to use those data to inform prevention and response efforts in their jurisdictions.

Training and technical assistance (TA) is essential to building knowledge and strengthening the capacity of recipients to implement and evaluate OD2A program strategies. CDC will develop and deploy a TA hub (hereafter referred to as the OD2A TA Center) to deliver comprehensive technical assistance and training to support the successful implementation and

evaluation of surveillance and prevention activities. The OD2A TA Center is designed to enhance the efficiency, coordination, and effectiveness of TA efforts by streamlining and centralizing the provision of overdose surveillance and prevention TA. TA to OD2A recipients is divided into four different levels with multiple modes of TA delivery and involves a wide range of TA providers including CDC staff, internal and external subject matter experts (SMEs), and program partners, as well as contract staff.

The evaluation consists of two web-based surveys designed to collect

process and outcome measures about TA access, utilization, and outcomes across all 66 OD2A recipient programs. The Technical Assistance Feedback Form will be administered to collect immediate feedback following individual TA encounters and group events such as webinars and in-person trainings. The Annual OD2A TA Survey will be distributed twice (mid-point and final) to assess satisfaction with overall TA provided and the extent to which TA supports informed implementation of OD2A strategies. The information obtained through this evaluation will allow TA providers to assess OD2A recipients' experience and utility of

knowledge and resources gained through individual TA support, peer-to-peer sessions, and other group trainings. Ultimately, the evaluation data will inform subsequent rounds of TA and allow TA providers to make necessary adjustments to the overall TA strategy for continuous quality improvement. This will ensure recipients have the support necessary to implement strategies that will improve opioid surveillance and prevention policies and practices within their communities.

The total annualized burden estimate is 222 hours. There is no cost to respondents other than the 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)
OD2A Recipients .....	TA Feedback Form .....	671	2	5/60
	Annual OD2A Survey .....	440	1	13/60
	Email invitation and reminders for OD2A Survey.	440	1	2/60

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2021-12208 Filed 6-9-21; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2018-N-1129]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; National Agriculture and Food Defense Strategy Survey**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by July 12, 2021.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written

comments be submitted to <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. The OMB control number for this information collection is 0910-0855. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-7726, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**National Agriculture and Food Defense Strategy Survey**

*OMB Control Number 0910-0855—Extension*

We are seeking OMB approval of the National Agriculture and Food Defense Strategy (NAFDS) under section 108 of the FDA Food and Safety Modernization Act (FSMA). This is a voluntary survey of State, local, territorial, and/or tribal (SLTT) governments intended to gauge government activities in food and agriculture defense from intentional

contamination and emerging threats. The collected information will be included in the mandatory NAFDS followup Report to Congress. The authority for us to collect the information derives from the Commissioner of Food and Drugs' authority provided in section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(C)).

Protecting the nation's food and agriculture supply against intentional contamination and other emerging threats is an important responsibility shared by SLTT governments as well as private sector partners. On January 4, 2011, the President signed into law FSMA. FSMA focuses on ensuring the safety of the U.S. food supply by shifting the efforts of Federal regulators from response to prevention and recognizes the importance of strengthening existing collaboration among all stakeholders to achieve common public health and security goals. FSMA identifies some key priorities for working with partners in areas such as reliance on Federal, State, and local agencies for inspections; improving foodborne illness surveillance; and leveraging and enhancing State and local food safety and defense capacities. Section 108 of FSMA (NAFDS) requires the Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA), in coordination

with the Department of Homeland Security (DHS), to work together with State, local, territorial, and tribal governments to monitor and measure progress in food defense.

In 2015, the initial NAFDS Report to Congress detailed the specific Federal response to food and agriculture defense goals, objectives, key initiatives, and activities that HHS, USDA, DHS, and other stakeholders planned to accomplish to meet the objectives outlined in FSMA. The NAFDS charts a direction for how Federal Agencies, in cooperation with SLTT governments and private sector partners, protect the nation’s food supply against intentional contamination. Not later than 4 years after the initial NAFDS Report to Congress (2015), and every 4 years thereafter (*i.e.*, 2019, 2023, 2027, etc.), HHS, USDA, and DHS are required to revise and submit an updated report to the relevant committees of Congress.

FDA is the Agency primarily responsible for obtaining the information from Federal and SLTT partners to complete the NAFDS Report

to Congress. An interagency working group will conduct the survey and collect and update the NAFDS as directed by FSMA, including developing metrics and measuring progress for the evaluation process.

The survey of Federal and State partners will be used to determine what food defense activities, if any, Federal and/or SLTT agencies have completed (or are planning on completing) from 2021 to 2025. Planning for the local, territorial, and tribal information collections will commence during this period of renewal. The survey will continue to be repeated approximately every 2 to 4 years, as described in section 108 of FSMA. The NAFDS survey is being administered for the purpose of monitoring progress in food and agricultural defense by government agencies.

A purposive sampling strategy is employed, such that the government agencies participating in food and agricultural defense are asked to respond to the voluntary survey. Food defense leaders responsible for

conducting food defense activities during a food emergency for their jurisdiction are identified and will receive an emailed invitation to complete the survey online; they will be provided with a web link to the survey. The survey will be conducted electronically on the FDA.gov web portal, and results will be analyzed by the interagency working group.

*Description of Respondents:* Respondents to this collection are SLTT government representatives (survey respondents) who are food defense leaders responsible for conducting food defense activities during a food emergency for their jurisdictions.

In the **Federal Register** of January 4, 2021 (86 FR 104), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics solicited and therefore will not be discussed in this document.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
SLTT Surveys .....	500	1	500	0.33 (20 minutes)	165

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The FDA Office of Partnerships reviewed the questionnaire and provided the estimate of time to complete the survey. The total burden is based on our previous experiences conducting surveys. The burden has been revised to reflect the total number of States and possible number of local, tribal, and territorial entities that may partake of the survey. Based on a review of the information collection since our last request for OMB approval, we have increased our burden estimate by 149 hours (from 16.17 to 165 hours) and 451 respondents (from 49 to 500 respondents).

Dated: June 7, 2021.

**Lauren K. Roth,**  
*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–12188 Filed 6–9–21; 8:45 am]

BILLING CODE 4164–01–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket Nos. FDA–2019–E–5338; FDA–2019–E–5346; and FDA–2019–E–5343]

**Determination of Regulatory Review Period for Purposes of Patent Extension; EVENITY**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for EVENITY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by August 9, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2021. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 9, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 9, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.



### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

**Instructions:** All submissions received must include the Docket Nos. FDA-2019-E-5338; FDA-2019-E-5343; FDA-2019-E-5346, For Determination of Regulatory Review Period for Purposes of Patent Extension; EVENITY. Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two

copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with § 10.20 (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.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product EVENITY (romosozumab-aqqg). EVENITY is indicated for the treatment of osteoporosis in postmenopausal women at high risk for fracture, defined as a history of osteoporotic fracture, or multiple risk factors for fracture; or patients who have failed or are intolerant to other available osteoporosis therapy. Subsequent to this approval, the USPTO received patent term restoration applications for EVENITY (U.S. Patent Nos. 7,592,429; 8,017,120; and 8,440,193) from Amgen Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated December 23, 2019, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of EVENITY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

#### II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for EVENITY is 4,519 days. Of this time, 3,524 days occurred during the testing phase of the regulatory review period, while 995 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* November 26, 2006. The applicant claims December 8, 2006,

as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 26, 2006, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* July 19, 2016. FDA has verified the applicant's claim that the biologics license application (BLA) for EVENTY (BLA 761062) was initially submitted on July 19, 2016.

3. *The date the application was approved:* April 9, 2019. FDA has verified the applicant's claim that BLA 761062 was approved on April 9, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,550 days, 1,575 days or 1,827 days of patent term extension.

### III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 3, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–12199 Filed 6–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2020–D–2303]

#### Core Patient-Reported Outcomes in Cancer Clinical Trials; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Core Patient-Reported Outcomes in Cancer Clinical Trials.” This draft guidance provides recommendations to sponsors regarding the collection of a core set of patient-reported clinical outcomes in cancer clinical trials and related considerations for instrument selection and trial design. This guidance focuses on patient-reported outcome (PRO) measures and is specific to registration trials for anti-cancer therapies intended to demonstrate an effect on survival, tumor response, or delay in the progression of a malignancy. The draft guidance recommendations supplement previous guidance on use of PRO measures in clinical trials by providing additional considerations specific to the cancer clinical trial setting. The draft guidance is intended to facilitate generation of high-quality data on a core set of patient-reported symptom and functional impacts that are important contributors to a patient's health-related quality of life.

**DATES:** Submit either electronic or written comments on the draft guidance by August 9, 2021 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to

the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA–2020–D–2303 for “Core Patient-Reported Outcomes in Cancer Clinical Trials.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit

both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:**

Vishal Bhatnagar, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2113, Silver Spring, MD 20993-0002, 240-402-3696; or Janice Kim, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2329, Silver Spring, MD 20993-0002, 301-796-9628; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301,

Silver Spring, MD 20993-0002, 240-402-7911.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a draft guidance for industry entitled “Core Patient-Reported Outcomes in Cancer Clinical Trials.” This draft guidance provides recommendations to sponsors regarding the collection of a core set of PROs in cancer clinical trials and related considerations for instrument selection and trial design. Although this draft guidance focuses on PRO measures, some of the recommendations may be relevant to other clinical outcome assessments (*i.e.*, clinician-reported outcome, observer-reported outcome, performance outcome) in cancer clinical trials. The draft guidance is specific to registration trials for anti-cancer therapies intended to demonstrate an effect on survival, tumor response, or delay in the progression of a malignancy.

Cancer clinical trials typically employ standardized efficacy assessment using overall survival and tumor measures, and safety assessments provided by clinician reporting of adverse events. FDA acknowledges the potential added value of incorporating PRO measurement of symptoms and functional impacts into the benefit/risk assessment in appropriately designed trials; however, heterogeneity in PRO assessment strategies has lessened the regulatory utility of PRO data from cancer trials. Systematic assessment of a core set of PROs can facilitate high quality data on patient-reported symptoms and functional impacts. FDA has previously described a core set of PROs that may be important contributors to a patient’s health-related quality of life and that may be sensitive to the effect of the disease and treatment under study.<sup>1</sup>

FDA is issuing this draft guidance to provide FDA’s current thinking on the core PROs, considerations for instrument selection to measure the core PROs, trial design considerations such as assessment frequency, and labeling considerations. The core PROs recommended in the draft guidance are disease-related symptoms, symptomatic adverse events, overall side effect impact summary measure, physical function, and role function.

This draft guidance is being issued consistent with FDA’s good guidance

practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Core Patient-Reported Outcomes in Cancer Clinical Trials.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

**II. Paperwork Reduction Act of 1995**

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910-0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910-0001; and the collections of information in 21 CFR part 601 have been approved under 0910-0338.

**III. Electronic Access**

Persons with access to the internet may obtain the draft guidance at either <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, or <https://www.regulations.gov>.

Dated: June 4, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021-12166 Filed 6-9-21; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2019-E-5832]

**Determination of Regulatory Review Period for Purposes of Patent Extension; XPOVIO**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for XPOVIO and is publishing this notice of that determination as required

<sup>1</sup> Kluetz, P.G., A. Slagle, E.J. Papadopoulos, et al., 2016, “Focusing on Core Patient-Reported Outcomes in Cancer Clinical Trials: Symptomatic Adverse Events, Physical Function, and Disease-Related Symptoms,” *Clinical Cancer Research*, 22(7):1553-1558.

by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**DATES:** Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 9, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2021. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 9, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 9, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### *Electronic Submissions*

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA-2019-E-5832 for “Determination of Regulatory Review Period for Purposes of Patent Extension; XPOVIO.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (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.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, XPOVIO (selinexor) indicated in combination with dexamethasone for the treatment of adult patients with relapsed or refractory multiple myeloma who have received at least four prior therapies and whose disease is refractory to at least

two proteasome inhibitors, at least two immunomodulatory agents, and an anti-CD38 monoclonal antibody. This indication is approved under accelerated approval based on response rate. Continued approval for this indication may be contingent upon verification and description of clinical benefit in a confirmatory trial. Subsequent to this approval, the USPTO received a patent term restoration application for XPOVIO (U.S. Patent No. 8,999,996) from Karyopharm Therapeutics Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 21, 2020, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of XPOVIO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for XPOVIO is 2,585 days. Of this time, 2,253 days occurred during the testing phase of the regulatory review period, while 332 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* June 6, 2012. The applicant claims June 8, 2012, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 6, 2012, which was the first date after receipt of an earlier IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* August 6, 2018. The applicant claims August 5, 2018, as the date the new drug application (NDA) for XPOVIO (NDA 212306) was initially submitted. However, FDA records indicate that NDA 212306 was submitted on August 6, 2018.

3. *The date the application was approved:* July 3, 2019. FDA has verified the applicant's claim that NDA 212306 was approved on July 3, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension.

In its application for patent extension, this applicant seeks 291 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 3, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–12167 Filed 6–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. FDA–2020–E–1325 and FDA–2020–E–1324]

### Determination of Regulatory Review Period for Purposes of Patent Extension; WAKIX

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined the regulatory review period for WAKIX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO),

Department of Commerce, for the extension of a patent which claims that human drug product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by August 9, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2021. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 9, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 9, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket Nos. FDA-2020-E-1325 and FDA-2020-E-1324 for “Determination of Regulatory Review Period for Purposes of Patent Extension; WAKIX.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (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 and the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the

docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, WAKIX (pitolisant hydrochloride). WAKIX is indicated for the treatment of excessive daytime sleepiness in adult patients with narcolepsy. Subsequent to this approval, the USPTO received patent term restoration applications for WAKIX (U.S. Patent Nos. 8,207,197 and 8,486,947) from Bioprojet, and the USPTO requested FDA’s assistance in determining the patent’s eligibility for patent term restoration. In a letter dated

May 26, 2020, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of WAKIX represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

##### **II. Determination of Regulatory Review Period**

FDA has determined that the applicable regulatory review period for WAKIX is 505 days. Of this time, 261 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* March 29, 2018. The applicant claims February 27, 2018, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 29, 2018, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 14, 2018. FDA has verified the applicant’s claim that the new drug application (NDA) for WAKIX (NDA 211150) was initially submitted on December 14, 2018.

3. *The date the application was approved:* August 14, 2019. FDA has verified the applicant’s claim that NDA 211150 was approved on August 14, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 389 days of patent term extension.

##### **III. Petitions**

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to:

Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 3, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–12148 Filed 6–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. FDA–2020–E–2039 and FDA–2020–E–2034]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; MAYZENT

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for MAYZENT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by August 9, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2021. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 9, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 9, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket Nos. FDA–2020–E–2039 and FDA–2020–E–2034 for “Determination of Regulatory Review Period for Purposes of Patent Extension; MAYZENT.” Received

comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (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.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Drug Price Competition and Patent Term Restoration Act of 1984



(Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, MAYZENT (siponimod). MAYZENT is indicated for the treatment of relapsing forms of multiple sclerosis, to include clinically isolated syndrome, relapsing-remitting disease, and active secondary progressive disease, in adults. Subsequent to this approval, the USPTO received patent term restoration applications for MAYZENT (U.S. Patent Nos. 7,939,519 and 8,492,441) from Novartis AG, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated December 14, 2020, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of MAYZENT represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for MAYZENT is 4,544 days. Of this time, 4,299 days occurred during the testing

phase of the regulatory review period, while 245 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* October 19, 2006. The applicant claims October 18, 2006, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 19, 2006, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* July 26, 2018. FDA has verified the applicant's claim that the new drug application (NDA) for MAYZENT (NDA 209884) was initially submitted on July 26, 2018.

3. *The date the application was approved:* March 26, 2019. FDA has verified the applicant's claim that NDA 209884 was approved on March 26, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,561 days or 848 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305),

Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 3, 2021.

**Lauren K. Roth,**  
Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–12171 Filed 6–9–21; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. FDA–2020–E–1846 and FDA–2020–E–1847]

### Determination of Regulatory Review Period for Purposes of Patent Extension; SARCLISA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for SARCLISA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by August 9, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2021. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 9, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 9, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.



### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

**Instructions:** All submissions received must include the Docket Nos. FDA-2020-E-1846 and FDA-2020-E-1847 for "Determination of Regulatory Review Period for Purposes of Patent Extension; SARCLISA." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two

copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with § 10.20 (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.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product SARCLISA (isatuximab-irfc). SARCLISA is indicated in combination with pomalidomide and dexamethasone, for the treatment of adult patients with multiple myeloma who have received at least two prior therapies including lenalidomide and a proteasome inhibitor. Subsequent to this approval, the USPTO received patent term restoration applications for SARCLISA (U.S. Patent Nos. 8,153,765 and 10,342,869) from SANOFI, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated October 13, 2020, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of SARCLISA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

#### II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for SARCLISA is 3,718 days. Of this time, 3,410 days occurred during the testing phase of the regulatory review period, while 308 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* December 29, 2009. FDA has verified the applicant's claim that the date the investigational new

drug application became effective was on December 29, 2009.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* April 30, 2019. FDA has verified the applicant's claim that the biologics license application (BLA) for SARCLISA (BLA 761113) was initially submitted on April 30, 2019.

3. *The date the application was approved:* March 2, 2020. FDA has verified the applicant's claim that BLA 761113 was approved on March 2, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 86 or 1,596 days of patent term extension.

**III. Petitions**

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 3, 2021.

**Lauren K. Roth,**  
*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–12189 Filed 6–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**[Docket Nos. FDA–2014–N–1031, FDA–2013–N–0878, FDA–2014–N–0998, FDA–2014–N–1076, FDA–2013–N–0520, FDA–2017–N–6397, FDA–2014–N–1030, and FDA–2020–N–1228]**

**Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals**

**AGENCY:** Food and Drug Administration, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at <http://www.reginfo.gov/public/do/PRAMain>. 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.

**TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB**

Title of collection	OMB control number	Date approval expires
FDA recall regulations .....	0910–0249	5/31/2024
Premarket Notification for a New Dietary Ingredient .....	0910–0330	5/31/2024
Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring .....	0910–0409	5/31/2024

**TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB—Continued**

Title of collection	OMB control number	Date approval expires
Formal Dispute Resolution; Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice ..	0910–0563	5/31/2024
Substances Prohibited From Use in Animal Food or Feed ...	0910–0627	5/31/2024
Food Labeling; Calorie Labeling of Articles of Food in Vending Machines and Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments .....	0910–0782	5/31/2024
Food Allergen Labeling and Reporting .....	0910–0792	5/31/2024
Study of Multiple Indications in Direct-to-Consumer Television Advertisements .....	0910–0897	5/31/2024

Dated: June 4, 2021.

**Lauren K. Roth,**  
*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–12156 Filed 6–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****[Docket No. FDA-2021-N-0463]****Advisory Committee; Medical Imaging Drugs Advisory Committee; Renewal****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice; renewal of Federal advisory committee.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the renewal of the Medical Imaging Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Medical Imaging Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the May 18, 2023, expiration date.

**DATES:** Authority for the Medical Imaging Drugs Advisory Committee will expire on May 18, 2023, unless the Commissioner formally determines that renewal is in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Joyce Yu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-837-7126, [MIDAC@fda.hhs.gov](mailto:MIDAC@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to 41 CFR 102-3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Medical Imaging Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology and makes appropriate recommendations to the Commissioner of Food and Drugs.

The Committee shall consist of 12 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of nuclear medicine, radiology, epidemiology or statistics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at <https://www.fda.gov/advisory-committees/human-drug-advisory-committees/medical-imaging-drugs-advisory-committee> or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at <https://www.fda.gov/AdvisoryCommittees/default.htm>.

Dated: June 3, 2021.

**Lauren K. Roth,***Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021-12174 Filed 6-9-21; 8:45 am]

**BILLING CODE 4164-01-P****DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration****[Docket No. FDA-2020-N-2217]****Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; New Animal Drugs for Investigational Use****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by July 12, 2021.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <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. The OMB control number for this information collection is 0910-0117. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-7726, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**New Animal Drugs for Investigational Use—21 CFR Part 511***OMB Control Number 0910-0117—Extension*

FDA has the authority under the Federal Food, Drug, and Cosmetic Act (FD&C Act) to approve new animal drugs. A new animal drug application (NADA) cannot be approved until, among other things, the new animal drug has been demonstrated to be safe and effective for its intended use(s). To properly test a new animal drug for an

intended use, appropriate scientific investigations must be conducted. Under specific circumstances, section 512(j) of the FD&C Act (21 U.S.C. 360b(j)) permits the use of an investigational new animal drug to generate data to support a NADA approval. Section 512(j) of the FD&C Act authorizes us to issue regulations relating to the investigational use of new animal drugs.

Our regulations in part 511 (21 CFR part 511) set forth the conditions for investigational use of new animal drugs and require reporting and recordkeeping. The information collected is necessary to protect the public health. We use the information to determine that investigational animal drugs are distributed only to qualified investigators, adequate drug accountability records are maintained, and edible food products from treated food-producing animals are safe for human consumption. We also use the information collected to monitor the validity of the studies submitted to us to support new animal drug approval.

*Reporting:* Our regulations require that certain information be submitted to us in a “Notice of Claimed Investigational Exemption for a New Animal Drug” (NCIE) to qualify for the exemption and to control shipment of the new animal drug and prevent potential abuse. The NCIE must contain, among other things, the following specific information: (1) Identity of the new animal drug, (2) labeling, (3) statement of compliance of any non-clinical laboratory studies with good laboratory practices, (4) name and address of each clinical investigator, (5)

the approximate number of animals to be treated or amount of new animal drug(s) to be shipped, and (6) information regarding the use of edible tissues from investigational animals (§ 511.1(b)(4) (21 CFR 511.1(b)(4))). If the new animal drug is to be used in food-producing animals (e.g., cattle, swine, chickens, fish, etc.), certain data must be submitted to us to obtain authorization for the use of edible food products from treated food-producing animals (§ 511.1(b)(5)). We require sponsors upon request to submit information with respect to the investigation to determine whether there are grounds for terminating the exemption (§ 511.1(b)(6)). We require sponsors to report findings that may suggest significant hazards pertinent to the safety of the new animal drug (§ 511.1(b)(8)(ii)). We also require reporting by importers of investigational new animal drugs for clinical investigational use in animals (§ 511.1(b)(9)). The information provided by the sponsor in the NCIE is needed to help ensure that the proposed investigational use of the new animal drug is safe and that any edible food will not be distributed without proper authorization from FDA. Information contained in an NCIE submission is monitored under our Bioresearch Monitoring Program. This program permits us to monitor the validity of the studies and to help ensure the proper use of the drugs is maintained by the investigators.

*Recordkeeping:* If the new animal drug is only for tests in vitro or in laboratory research animals, the person distributing the new animal drug must

maintain records showing the name and post office address of the expert or expert organization to whom it is shipped and the date, quantity, and batch or code mark of each shipment and delivery for a period of 2 years after such shipment or delivery (§ 511.1(a)(3) and (b)(3)). We require complete records of the investigation, including records of the receipt and disposition of each shipment or delivery of the investigational new animal drug (§ 511.1(b)(7)). We also require records of all reports received by a sponsor from investigators to be retained for 2 years after the termination of an investigational exemption or approval of a new animal drug application (§ 511.1(b)(8)(i)).

*Description of Respondents:* Respondents to this collection of information are persons who use new animal drugs for investigational purposes. Investigational new animal drugs are used primarily by drug industry firms, academic institutions, and the government. Investigators may include individuals from these entities, as well as research firms and members of the medical professions.

In the **Federal Register** of December 21, 2020 (85 FR 83092), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics solicited and therefore will not be discussed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

21 CFR Section/Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
511.1(b)(4); submission of NCIE .....	279	5.94	1,657	1	1,657
511.1(b)(5); submission of data to obtain authorization for the use of edible food products .....	279	0.10	28	8	224
511.1(b)(6); submission of any additional information upon request of FDA .....	279	0.001	0.28	1	0.28
511.1(b)(8)(ii); reporting of findings that may suggest significant hazards pertinent to the safety of the new animal drug .....	279	0.05	14	2	28
511.1(b)(9); reporting by importers of investigational new animal drugs for clinical investigational use in animals ...	279	0.05	14	8	112
Total .....	.....	.....	1,713	.....	2,021

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>

21 CFR Section/Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
511.1(a)(3); maintain records showing the name and post office address of the expert or expert organization to whom the new animal drug is shipped and the date, quantity, and batch or code mark of each shipment and delivery for a period of 2 years after such shipment or delivery .....	279	0.99	276	1	276
511.1(b)(3); maintain records showing the name and post office address of the investigator to whom the new animal drug or feed containing same is shipped and the date, quantity, and batch or code mark of each shipment and delivery for a period of 2 years after such shipment or delivery .....	279	5.94	1,657	1	1,657
511.1(b)(7); maintain records of the investigation, including records of the receipt and disposition of each shipment or delivery of the investigational new animal drug .....	279	5.94	1,657	3.5	5,800
511.1(b)(8)(i); maintain records of all reports received by a sponsor from investigators .....	279	5.94	1,657	3.5	5,800
<b>Total</b> .....			<b>5,247</b>		<b>13,533</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for reporting requirements, record preparation, and maintenance for this collection of information is based on our informal communication with industry. Based on the number of sponsors subject to animal drug user fees, we estimate that there are 279 respondents. We use this estimate consistently throughout the table and calculate the “number of responses per respondent” by dividing the total annual responses by number of respondents. We note an apparent difference in the estimated number of respondents from the previous renewal issued in 2018. There was an error in calculating the number of sponsors subject to animal drug user fees in the 2018 renewal. When calculating the number of recordkeepers, we inadvertently used the number of sponsors that paid user fees (*i.e.*, those that did not qualify for user fee waivers) as opposed to the total number of sponsors subject to animal drug user fees. Both fee-paying and non-fee-paying sponsors are respondents with respect to this information collection.

Additional information needed to make a final calculation of the total burden hours (*i.e.*, the number of respondents, the number of recordkeepers, the number of NCIEs received, etc.) is derived from our records. There is a small increase in the total burden hours that we attribute to an increase in the number of annual responses and records.

Dated: June 4, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–12197 Filed 6–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. FDA–2020–E–1854 and FDA–2020–E–1855]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; SPRAVATO

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for SPRAVATO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

**DATES:** Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 9, 2021. Furthermore, any interested person may

petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2021. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 9, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 9, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact

information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket Nos. FDA-2020-E-1854 and FDA-2020-E-1855 for “Determination of Regulatory Review Period for Purposes of Patent Extension; SPRAVATO.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked

as “confidential” will not be disclosed except in accordance with § 10.20 (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.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all

of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, SPRAVATO (esketamine hydrochloride) indicated in conjunction with an oral antidepressant, for the treatment of treatment-resistant depression in adults. Subsequent to this approval, the USPTO received patent term restoration applications for SPRAVATO (U.S. Patent Nos. 8,785,500 and 9,592,207) from Icahn School of Medicine at Mt. Sinai, Yale University, and U.S. Department of Health and Human Services. The USPTO requested FDA’s assistance in determining the patents’ eligibility for patent term restoration. In a letter dated October 13, 2020, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of SPRAVATO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

##### II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for SPRAVATO is 2,456 days. Of this time, 2,273 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* June 15, 2012. FDA has verified the applicants’ claims that the date the investigational new drug application became effective was June 15, 2012.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 4, 2018. FDA has verified the applicants’ claims that the new drug application (NDA) for SPRAVATO (NDA 211243) was initially submitted on September 4, 2018.

3. *The date the application was approved:* March 5, 2019. FDA has verified the applicants’ claims that NDA 211243 was approved on March 5, 2019. Because existing information and prior scheduling of ketamine under Schedule III of the Controlled Substances Act (CSA) was in place, no interim final rule recommending changes of the scheduling of esketamine under section 201(j) of the CSA was requested by FDA. Consequently, no adjustment of the regulatory review period approval date was required (35 U.S.C. 156(i)(2)).

This determination of the regulatory review period establishes the maximum

potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, these applicants seek 452 days or 596 days of patent term extension.

### III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 2, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–12193 Filed 6–9–21; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2020–E–1895]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; OPTIMIZER

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for OPTIMIZER and is publishing this notice of that determination as required by law. FDA has made the

determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by August 9, 2021. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2021. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 9, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 9, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA–2020–E–1895 for “Determination of Regulatory Review Period for Purposes of Patent Extension; OPTIMIZER.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (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.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device OPTIMIZER. OPTIMIZER is indicated to improve 6-minute hall walk distance, quality of life, and functional status of New York Heart Association Class III heart failure patients who remain symptomatic despite guideline-directed medical therapy, are in normal sinus rhythm, are not indicated for Cardiac Resynchronization Therapy, and have a left ventricular ejection fraction ranging

from 25 percent to 45 percent. Subsequent to this approval, the USPTO received a patent term restoration application for OPTIMIZER (U.S. Patent Nos. 8,260,416 and 8,311,629) from Impulse Dynamics N.V., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 9, 2020, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of OPTIMIZER represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

**II. Determination of Regulatory Review Period**

FDA has determined that the applicable regulatory review period for OPTIMIZER is 5,434 days. Of this time, 5,236 days occurred during the testing phase of the regulatory review period, while 198 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* May 6, 2004. FDA has verified the applicant's claim that the date the investigational device exemption for human tests to begin, as required under section 520(g) of the FD&C Act, became effective May 6, 2004.
2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* September 5, 2018. FDA has verified the applicant's claim that the premarket approval application (PMA) for OPTIMIZER (PMA 180036) was initially submitted September 5, 2018.
3. *The date the application was approved:* March 21, 2019. FDA has verified the applicant's claim that PMA 180036 was approved on March 21, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,258 days or 1,293 days of patent term extension.

**III. Petitions**

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**).

Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA-2013-S-0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 3, 2021.

**Lauren K. Roth,**  
Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021-12192 Filed 6-9-21; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2012-N-0115]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry and Food and Drug Administration Staff—Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Principle**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by July 12, 2021.



**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <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. The OMB control number for this information collection is 0910–0594. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Guidance for Industry and FDA Staff—Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle**

OMB Control Number 0910–0594—Extension

This information collection supports Agency regulations. Under the Safe Medical Devices Act of 1990 (Pub. L. 101–629), FDA may establish special controls, including performance standards, postmarket surveillance, patient registries, guidelines, and other appropriate actions it believes necessary to provide reasonable assurance of the safety and effectiveness of the device. The special control guidance serves as the special control for the automated blood cell separator device operating by centrifugal or filtration separation

principle intended for the routine collection of blood and blood components (§ 864.9245 (21 CFR 864.9245)). The guidance entitled “Guidance for Industry and FDA Staff—Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle” is available at <https://www.fda.gov/media/124263/download>.

For currently marketed products not approved under the premarket approval process, the manufacturer should file with FDA for 3 consecutive years an annual report on the anniversary date of the device reclassification from class III to class II or on the anniversary date of the 510(k) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360(k)) clearance. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the FD&C Act should be included in the annual report. Also, a manufacturer of a device determined to be substantially equivalent to the centrifugal or filtration-based automated cell separator device intended for the routine collection of blood and blood components should comply with the same general and special controls.

The annual report should include, at a minimum, a summary of anticipated and unanticipated adverse events that have occurred and that are not required to be reported by manufacturers under Medical Device Reporting (MDR) (part 803 (21 CFR part 803)). The reporting of adverse device events summarized in an annual report will alert FDA to trends or clusters of events that might be a safety issue otherwise unreported under the MDR regulation. The report should also include any subsequent change to the preamendments class III device requiring a 30-day notice in accordance with 21 CFR 814.39(f).

Reclassification of this device from class III to class II relieves

manufacturers of the burden of complying with the premarket approval requirements of section 515 of the FD&C Act (21 U.S.C. 360e) and may permit small potential competitors to enter the marketplace by reducing the burden. Although the special control guidance recommends that manufacturers of these devices file with FDA an annual report for 3 consecutive years, this would be less burdensome than the current postapproval requirements under 21 CFR part 814, subpart E, including the submission of periodic reports under 21 CFR 814.84.

Collecting or transfusing facilities, the intended users of the device, and the device manufacturers have certain responsibilities under the Federal regulations. For example, collecting or transfusing facilities are required to maintain records of any reports of complaints of adverse reactions (21 CFR 606.170), while the device manufacturer is responsible for conducting an investigation of each event that is reasonably known to the manufacturer and evaluating the cause of the event (§ 803.50(b) (21 CFR 803.50(b))). In addition, manufacturers of medical devices are required to submit to FDA individual adverse event reports of death, serious injury, and malfunctions (§ 803.50).

In the special control guidance document, FDA recommends that manufacturers include in their three annual reports a summary of adverse reactions maintained by the collecting or transfusing facility or similar reports of adverse events collected.

In the **Federal Register** of February 18, 2021 (86 FR 10108), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual Report .....	3	1	3	5	15

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA records, there are approximately three manufactures of automated blood cell separator devices. We estimate that the manufacturers will spend approximately 5 hours preparing and submitting the annual report. Based on a review of the information

collection since our last request for OMB approval, we have made no adjustments to our burden estimates.

Other burden hours required for § 864.9245 are reported and approved under OMB control number 0910–0120 (premarket notification submission

510(k), 21 CFR part 807, subpart E), and OMB control number 0910–0437 (MDR, part 803).

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: June 3, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–12191 Filed 6–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2020–N–0315]

#### **Electronic Study Data Submission; Data Standards; Support and Requirement Begin for Study Data Tabulation Model Version 1.8 With Standard for Exchange of Nonclinical Data Implementation Guide—Animal Rule Version 1.0; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** on March 11, 2020. The document announced that FDA will begin supporting the Clinical Data Interchange Standards Consortium (CDISC) for Study Data Tabulation Model version 1.8 (SDTM v1.8), and CDISC Standard for Exchange of Nonclinical Data Implementation Guide—Animal Rule version 1.0 (SENDIG–AR v1.0) on March 15, 2020, and that these new standards will be required in submissions to FDA effective March 15, 2022. The document omitted the 36-month implementation period for certain investigational new drugs applications (INDs) as required by the guidance for industry entitled “Providing Regulatory Submissions in Electronic Format—Standardized Study Data” which is referenced in that document. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Chenoa Conley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1117, Silver Spring, MD 20993–0002, 301–796–0035, email: [cdertextstandards@fda.hhs.gov](mailto:cdertextstandards@fda.hhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### *Correction*

In the **Federal Register** of March 11, 2020 (85 FR 14205), in FR Doc. 2020–04898, the following corrections are made:

1. On page 14205, in the second column, the first sentence of the

**SUMMARY** is corrected to read: “The Food and Drug Administration (FDA or Agency) Center for Drug Evaluation and Research (CDER) is announcing that FDA will begin supporting the Clinical Data Interchange Standards Consortium (CDISC) for Study Data Tabulation Model version 1.8 (SDTM v1.8), and CDISC Standard for Exchange of Nonclinical Data Implementation Guide—Animal Rule version 1.0 (SENDIG–AR v1.0) on March 15, 2020, and that these new standards will be required in submissions for studies that start after March 15, 2022 (for new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biologics license applications (BLAs)), and in submissions for studies that start after March 15, 2023 (for certain investigational new drug applications (INDs)), that are submitted to CDER.”

2. On page 14206, in the first column, the last sentence of the document is corrected to read as follows: “FDA will begin supporting SDTM v1.8 and SENDIG–AR v1.0 on March 15, 2020, and the use of these new standards will be required in Animal Rule<sup>1</sup> submissions for studies that start after March 15, 2022 (for NDAs, ANDAs, and BLAs), and in Animal Rule submissions for studies that start after March 15, 2023 (for certain INDs), that are submitted to CDER.”

Dated: June 4, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021–12198 Filed 6–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2011–N–0362]

#### **Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice for Finished Pharmaceuticals, Including Medical Gases, and Active Pharmaceutical Ingredients**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is

<sup>1</sup> The Animal Rule refers to FDA’s regulations for the approval of new drugs and biological products when human efficacy studies are not ethical or feasible (see 21 CFR 314.600–650 for drugs and 21 CFR 601.90–95 for biologics).

announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by July 12, 2021.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <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. The OMB control number for this information collection is 0910–0139. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### **Current Good Manufacturing Practice for Finished Pharmaceuticals, Including Medical Gases, and Active Pharmaceutical Ingredients—21 CFR Parts 210 and 211 and 21 U.S.C 351(a)(2)(B)**

*OMB Control Number 0910–0139—Extension*

This information collection supports FDA regulations that govern the manufacture, processing, packing, or holding of finished pharmaceuticals, including medical gases, and active pharmaceutical ingredients (APIs). Under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C 351(a)(2)(B)), a drug is adulterated if the methods used in, or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice (CGMP) regulations. FDA is responsible for enforcing the FD&C Act as well as related statutes, including the Public Health Service Act. Congress enacted these laws to ensure that covered products meet applicable requirements regarding the safety, identity and strength, and the quality

and purity characteristics they purport or are represented to possess, and are labeled with adequate warnings and instructions for use.

The pharmaceutical or drug quality-related regulations appear in several parts of Title 21 Code of Federal Regulations (CFR) (Food and Drugs), including sections in parts 1 through 99, 200 through 299, 300 through 499, 600 through 799, and 800 through 1,299. The regulations enable a common understanding of the regulatory process by describing requirements to be followed by drug manufacturers, applicants, and FDA. Under part 211 (21 CFR part 211; see 21 CFR 211.94(e)(1)), specific requirements for medical gas containers and closures are also found in the regulations. Finally, the information collection also supports regulations codified under parts 610 and 680 (21 CFR parts 610 and 680), which reference certain CGMP regulations in part 211 (see §§ 610.12(g), 610.13(a)(2), 610.18(d), 680.2(f), and 680.3(f)).

These regulations set forth information collection requirements that allow FDA to meet its public health protection responsibilities. Products that fail to comply with CGMP requirements may be rendered adulterated under section 501(a)(2)(B) of the FD&C Act. To demonstrate that their products comply with the requirements of section 501(a)(2)(B), API manufacturers must maintain CGMP

records; therefore, we have counted them among respondents who incur burden for the information collection. In the table below, we have included an additional 1,260 respondents to reflect API manufacturers not included in our previous submission for renewal.

To assist respondents with the information collection requirements for medical gases, we developed a draft guidance for industry entitled “Current Good Manufacturing Practice for Medical Gases.” This guidance, when finalized will discuss our recommendations regarding compliance with applicable requirements found in the regulations as they apply to these products. The guidance is available for download from our internet site at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/current-good-manufacturing-practice-medical-gases>. We believe the recommendations, if followed, will help respondents focus their information collection activities most efficiently with regard to demonstrating regulatory compliance.

In the **Federal Register** of March 3, 2021 (86 FR 12466), we published a 60-day notice requesting public comment on the proposed collection of information. One comment was received requesting clarification on FDA’s basis in calculating its burden estimate. At the same time, the comment offered no formula or method upon which

alternative figures might be derived. For details regarding all approved information collections currently in use by FDA, we invite readers to visit <https://www.reginfo.gov/public/jsp/PRA/pradashboard.myjsp>. With regard to this information collection specifically, our estimate of burden, as defined in 44 U.S.C. 3502(2), is based on our experience with routine inspections and informal communications with industry. Additionally, as noted in our 60-day notice, we account for burden that may be applicable to API and finished dosage manufacturers along with other respondents to the information collection. The estimate we provide reflects burden we attribute to activities associated with recordkeeping requirements found in applicable regulations, as well as recommendations that may be found in Agency guidance.<sup>1</sup> These activities include, among others, establishing and maintaining standard operating procedures; the need to consult outside experts; recommendations pertaining to documenting equipment cleaning and maintenance; and requirements and recommendations pertaining to master production records, control records, and distribution records.

We retain our estimate of the information collection burden, which is as follows:

**TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN—APIS, FINISHED PHARMACEUTICALS, AND MEDICAL GASES<sup>1 2</sup>**

Section 501(a)(2)(B) of the FD&C Act; Parts 210 and 211	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
CGMP API Manufacturers .....	1,260	256	322,560	0.82 (49.2 minutes)	264,499
CGMP Finished Pharmaceuticals Manufacturers (excludes medical gases) .....	3,270	299	977,730	0.64 (38 minutes)	625,747
CGMP Medical Gases Manufacturers .....	2,284	280	639,520	0.62 (37 minutes)	396,502
<b>Total .....</b>			<b>1,939,810</b>		<b>1,286,748</b>

<sup>1</sup> There are no capital or operating and maintenance costs associated with the information collection.

<sup>2</sup> Records and burden per activity have been averaged and rounded.

Our estimated burden for the information collection reflects an overall decrease of 29,073 hours and 1,762 records annually for CGMP for finished pharmaceutical manufacturers, excluding those manufacturers of medical gases. Our estimated burden for the information collection also reflects an overall decrease of 486 hours and 1,574 records annually for medical gas

manufacturers. Our inclusion of API manufacturers in this collection represents an addition of 264,499 hours and 322,560 records prepared.

Dated: June 2, 2021.

**Lauren K. Roth,**  
Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–12214 Filed 6–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

<sup>1</sup> See also, “Q7 Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients; Guidance for Industry” (September 2016).

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Bureau of Primary Health Care—Program Management Resource Compendium, 0906–XXXX, New**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than August 9, 2021.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the ICR title for reference.

*Information Collection Request Title:* Bureau of Primary Health Care—Program Management Resource Compendium, OMB No. 0906–XXXX, New.

*Abstract:* The Program Management Resource Compendium project will encompass a historical analysis of HRSA’s Bureau of Primary Health Care (BPHC), as well as an historical analysis of the Health Center Program. Dating from the founding of the initial community health centers in the mid-1960s up to the present time, the analysis will consider the evolution and critical milestones of BPHC and the Health Center Program based on documentary research and interviews with individuals with historical knowledge of the Health Center Program and the health center movement.

*Need and Proposed Use of the Information:* The information gathered through interviews will be combined with information drawn from documentary research to inform the historical analysis. The results of the analysis will be presented in communication products for an internal audience, as well as products for an external audience. The goals of the project are to increase awareness of the Health Center Program management within the government and among the general public, as well as to inform BPHC’s future development by analyzing and drawing lessons from its earlier administration of the Health Center Program.

*Likely Respondents:* Interviews are expected with current and former HRSA employees, as well as representatives of the National Association of Community Health Centers, other national organizations, state and regional Primary Care Associations, and HRSA-funded health centers. A list of possible interviewees has been compiled with input by current and former BPHC leadership and staff. A total of 35–50 interviews are expected.

Interviews will be conducted virtually by a trained moderator and note taker, using a structured in-depth interview guide. Each interview is expected to last approximately one hour. It is also anticipated that interviewees may spend up to 15 minutes preparing for their interviews, for example by reviewing historical files. Signed consent forms

regarding participation and the use of recording devices during the interview will be obtained from each participant prior to their participation in the interviews. The following are sample interview questions that may be included in the in-depth interview guide:

- What were program management processes like when you began working at BPHC? What were they like by the time you left?
- What major transitions or changes in program management occurred during your tenure and why were these undertaken?
- What positive experiences or outcomes have you witnessed as a result of the Health Center Program and its program management?
- What are some specific issues, concerns, or problems faced by the Health Center Program through the years? How has the program adapted to meet these challenges?
- How do you envision BPHC evolving over the next 5 years?
- If you could choose two elements of BPHC’s management processes to change, what would you change and why?
- What inspired you to become involved with the Health Center Program?

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; train personnel and to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

**TOTAL ESTIMATED ANNUALIZED BURDEN HOURS**

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Historical interview .....	50	1	50	1.25	62.5
Total .....	50	.....	50	.....	62.5

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2021-12150 Filed 6-9-21; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

[Document Identifier: OS-0990-XXXX]

**Agency Information Collection Request; 30-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 July 12, 2021.

**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](http://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:** Sherrette Funn, [Sherrette.Funn@hhs.gov](mailto:Sherrette.Funn@hhs.gov) or (202) 795-7714. When submitting comments or requesting information, please include the document identifier 0990-New-30D and project title for reference.

**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:* Family Planning Annual Report 2.0.

*Type of Collection:* New.

*OMB No.:* 0990-NEW—Office of Population Affairs.

*Abstract:* The Office of Population Affairs (OPA), within the Office of the Assistant Secretary for Health, seeks approval for a new 3-year encounter level data collection for the Family Planning Annual Report (FPAR). Currently collected in aggregate under OMB No. 0990-0221, this new data collection, "FPAR 2.0", will collect information at the encounter level and build on the existing data collection and reporting system. This annual reporting requirement is for competitively awarded grants authorized and funded by the Title X Family Planning Program.

**ESTIMATED ANNUALIZED BURDEN TABLE**

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Grantees .....	70	1	102	7140
Total .....	70	1	102	7140

**Sherrette A. Funn,**

*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. 2021-12113 Filed 6-9-21; 8:45 am]

**BILLING CODE 4150-34-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Heart, Lung, and Blood Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Trials SEP (UG3, U24, R61, R34).

*Date:* July 21, 2021.

*Time:* 10:00 a.m. to 5:00 p.m.  
*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Zhihong Shan, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–J, Bethesda, MD 20892, (301) 827–7085, [zhihong.shan@nih.gov](mailto:zhihong.shan@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 4, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–12138 Filed 6–9–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Understanding and Reducing Cardiovascular Disease in Type 1 Diabetes Mellitus.

*Date:* July 15, 2021.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, (301) 827–7987, [susan.sunnarborg@nih.gov](mailto:susan.sunnarborg@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for

Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 4, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–12142 Filed 6–9–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Hurley; tel. 240–669–5092; [benjamin.hurley@nih.gov](mailto:benjamin.hurley@nih.gov). Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

**SUPPLEMENTARY INFORMATION:** Technology description follows:

#### **FRugally Optimized DNA Octamer (FRODO): DNA Vector and Uses Thereof for Detecting HIV and SIV**

##### *Description of Technology*

Quantitative polymerase chain reactions (qPCRs) are commonly employed to enumerate genes of interest among particular biological samples. Insertion of PCR amplicons into plasmid DNA is a mainstay for creation of known quantities of target sequences to standardize quantitative PCRs. Typically, one amplicon is inserted into one plasmid construct, the plasmid is then amplified, purified, serially diluted, and then quantified to be used to enumerate target sequences in

unknown samples. As qPCR is often used to detect multiple amplicons simultaneously, individual qPCR standards are often desired to be normalized one to another. Unlike prior methods using separate plasmid constructs for each target sequence, FRODO incorporates eight amplicons into one plasmid construct ensuring equivalent template copy numbers for all amplicons. Amplifying, purifying, diluting and quantifying one plasmid construct rather than eight individual constructs streamlines standard curve qPCR analyses, reducing reagents and simplifying normalization between amplicons.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

##### *Potential Commercial Applications*

- Clinical Detection, Monitoring of Nucleic Acid Markers of HIV and Immunological Health: FRODO may be used to efficiently quantify target sequences in unknown samples.
- FRODO is a single plasmid containing 8 amplicons which can be used to quantify several different strains of SIV and HIV, cell number equivalents for humans and nonhuman primates, T cell receptor excision circles (humans and nonhuman primates), and bacterial 16S and ampicillin resistance DNA.
- FRODO may offer improved, more affordable, highly-sensitive nucleic acid-based HIV quantification and/or diagnostic response times, enhancing patient treatment and interventions.
- FRODO can be used to quantify levels of bacterial DNA in clinical samples to determine potential sepsis.
- This technology is especially useful in translational HIV research in which human and nonhuman primate models are used to study HIV pathogenesis, informing public health responses.

##### *Competitive Advantages*

- A simplified workflow for qPCR testing. Amplifying, purifying, diluting and quantifying one plasmid construct rather than multiple, individual constructs streamlines standard curve qPCR analyses, reducing reagents and simplifying normalization between amplicons.
- At present, there are a number of antibody-based clinical tools that may be used for diagnosing/detecting HIV, but there are fewer products that affordably detect/monitor nucleic acids of HIV within cells, and immunological health, and efficacy of medicaments

aimed at reducing cells infected with HIV.

*Inventors:* Jason Brenchley and Charlotte Langner, both of NIAID.

*Publications:* Langer, Charlotte A. and Brenchley, Jason M.; Frugally Optimized DNA Octomer (FRODO) qPCR Measurement of HIV and SIV in Human and Nonhuman Primate Samples; *Current Protocols*, 2021.

*Intellectual Property:* HHS Reference No. E-024-2021; US Provisional Application No. 63/128,392.

*Licensing Contact:* To license this technology, please contact Benjamin Hurley at 240-669-5092 or [benjamin.hurley@nih.gov](mailto:benjamin.hurley@nih.gov), and reference E-024-2021.

*Collaborative Research Opportunity:* The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this invention. For collaboration opportunities, please contact Benjamin Hurley; 240-669-5092, [benjamin.hurley@nih.gov](mailto:benjamin.hurley@nih.gov).

Dated: June 2, 2021.

**Surekha Vathyam,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2021-12181 Filed 6-9-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Summer Institute for Biostatistics.

*Date:* July 15, 2021.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Shelley Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 208-T, Bethesda, MD 20817, (301) 827-7984, [ssehnert@nhlbi.nih.gov](mailto:ssehnert@nhlbi.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 4, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-12140 Filed 6-9-21; 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 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Computational, Modeling and Biodata Management.

*Date:* July 6, 2021.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 6188, MSC 7804, Bethesda, MD 20892, (301) 435-1267, [belangerm@csr.nih.gov](mailto:belangerm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

*Date:* July 7-8, 2021.

*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:* Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6189, MSC 7804, Bethesda, MD 20892, 301-408-9916, [sizemoren@csr.nih.gov](mailto:sizemoren@csr.nih.gov).

*Name of Committee:* Population Sciences and Epidemiology Integrated Review Group; Biostatistical Methods and Research Design Study Section.

*Date:* July 7-9, 2021.

*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:* Victoriya Volkova, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, Bethesda, MD 20892, (301) 594-7781, [victoriya.volkova@nih.gov](mailto:victoriya.volkova@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Synthetic and Biological Chemistry.

*Date:* July 7-8, 2021.

*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:* Shan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496-4390, [shan.wang@nih.gov](mailto:shan.wang@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Oral and Dental Sciences.

*Date:* July 7, 2021.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, (301) 435-1850, [limc4@csr.nih.gov](mailto:limc4@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Biostatistical Methods and Research Design.

*Date:* July 7, 2021.

*Time:* 1:30 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:* Karen Nieves Lugo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 3148, MSC 7770, Bethesda, MD 20892, (301) 594-9088, [karen.nieveslugo@nih.gov](mailto:karen.nieveslugo@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Detection and Therapy.

*Date:* July 7, 2021.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Laura Asnaghi, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, (301) 443-1196, [laura.asnaghi@nih.gov](mailto:laura.asnaghi@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 4, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-12144 Filed 6-9-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Collaborative Research Projects (PAR-18-951).

*Date:* July 21, 2021.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Rajiv Kumar, Ph.D., Branch Chief, Blood and Vascular Branch, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, 208-W, Bethesda, MD 20892, 301-827-4612, [rajiv.kumar@nih.gov](mailto:rajiv.kumar@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 4, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-12141 Filed 6-9-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Hurley; tel. 240-669-5092; [benjamin.hurley@nih.gov](mailto:benjamin.hurley@nih.gov). Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301-496-2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

**SUPPLEMENTARY INFORMATION:** Technology description follows:

*Producing Modified Vaccinia Ankara (MVA) Virus with Continuous Mammalian Cell Lines: Viral Host-range Factors for Increasing MVA Vaccine Production Yield Description of Technology:*

Modified vaccinia Ankara (MVA) based vaccines are being deployed in numerous human clinical trials for indications such as measles, malaria, HIV-1 and MERS to name a few. As with many vaccines, scale-up and production are significant challenges with the MVA platform. Not only are current large-scale MVA vaccine production processes inefficient (such

as the cumbersome use of chick embryo fibroblast (CEF) cells), but a major bottleneck lies in limited host cell propagation options and a lack of viable continuous cell lines suitable for MVA vaccine production.

To address this need, scientists at NIAID have identified a number of key viral factors in MVA replication in mammalian cells and developed methods of modifying MVA viruses in a way that allows for the growth of MVA in cells that were previously considered unsuitable for such purpose. For example, NIAID scientists observed that the introduction of a serine protease inhibitor 1 (SPI-1) gene into the MVA genome led to more than a 2-log enhancement of virus spread in human diploid MRC-5 cells, whereas deletion of the gene diminished the spread of host-range extended viruses by similar extents. Additionally, MRC-5 cells stably expressing SPI-1 also enhanced replication of MVA.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

*Potential Commercial Applications:*

- *Vaccine Development:* Recombinant MVA-based vaccine production in non-CEF cell lines.

- *Therapeutic oncolytic virus:*

Recombinant MVA constructs encoding oncolytic tumor-suppressor proteins, pro-apoptotic proteins, cytokines, immunomodulatory proteins, cytotoxic peptides, suicide proteins, cytotoxins, pro-drugs, therapeutic RNAs, etc.

*Competitive Advantages:*

- Recombinant MVA constructs for use in non-avian, continual cell line-mediated vaccine production.

- Efficient scale-up vaccine production as a result of higher viral yield, enhancing epidemic/pandemic preparedness.

*Inventors:* Bernard Moss, Linda Wyatt, Ruikang Liu, Jorge Mendez-Rios, all of NIAID.

*Publications:*

Liu R, Mendez-Rios JD, Peng C, et al. SPI-1 is a missing host-range factor required for replication of the attenuated modified vaccinia Ankara (MVA) vaccine vector in human cells.; *PLoS Pathog.* 2019.

Peng C, Moss B. Repair of a previously uncharacterized second host-range gene contributes to full replication of modified vaccinia virus Ankara (MVA) in human cells. *Proc Natl Acad Sci U S A.* 2020.

*Intellectual Property:* HHS Reference No. E-076-2019; International Application No. PCT/US20/33788.

*Licensing Contact:* To license this technology, please contact Benjamin



Hurley at 240-669-5092 or [benjamin.hurley@nih.gov](mailto:benjamin.hurley@nih.gov), and reference E-076-2019.

**Collaborative Research Opportunity:** The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this invention. For collaboration opportunities, please contact Benjamin Hurley; (240) 669-5092, [benjamin.hurley@nih.gov](mailto:benjamin.hurley@nih.gov).

Dated: June 2, 2021.

**Surekha Vathyam,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2021-12182 Filed 6-9-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Career Development Awards—K99.

*Date:* July 14, 2021.

*Time:* 11:30 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 208-Y, Bethesda, MD 20892, (301) 827-7911, [lindsay.garvin@nih.gov](mailto:lindsay.garvin@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 4, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-12139 Filed 6-9-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Hurley at 240-669-5092; [benjamin.hurley@nih.gov](mailto:benjamin.hurley@nih.gov). Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301-496-2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

**SUPPLEMENTARY INFORMATION:** Technology description follows:

#### Producing Modified Vaccinia Ankara (MVA) Virus With Continuous Cell Lines: Modifications of Mammalian Host Cells for Increasing MVA Vaccine Production Yield

*Description of Technology:* Modified vaccinia Ankara (MVA) is a well-known and important platform for vaccine development, and many MVA-based vaccine trials are currently underway to prevent a variety of microbial diseases. While MVA shows promise as a vaccine platform, wide-scale industry use of MVA may be currently held back due to MVA's severe host-restriction, and the fact that large bulks of culture cells are presently required to produce enough product for mass commercial use. At present, the range of commonly-used culture cells that can support high-titer production of MVA is limited to chick embryo fibroblast (CEF) cells.

Unfortunately, the production of CEF cells in bulk involves many slow and inefficient manufacturing steps both upstream and downstream. Therefore, especially in the context of pandemic preparedness, continuous cell lines that allow for efficient, large-scale MVA propagation would be beneficial.

There is a clear need for an expanded range of cell lines that are easily maintained in culture, and that allow for the production of high titers of infectious MVA virus. The present invention provides methods of modifying non-permissive cell lines in a way that allows for production of MVA.

Scientists at NIAID have made a breakthrough discovery by identifying the mammalian Zinc finger antiviral protein (ZAP) as a restriction factor that inhibits MVA growth in mammalian cells. They have demonstrated that ZAP abrogation enhanced replication of the MVA in a range of mammalian cells that are normally non-permissive for MVA replication. In particular, CRISPR/Cas9 inactivation of ZAP was shown to produce stable cell lines capable of supporting MVA replication. Additionally, recombinant host cells engineered to produce vaccinia virus proteins C12L and C16L have been shown to overcome the host range inhibition of the MVA.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

#### *Potential Commercial Applications:*

- **Vaccine Development:** Recombinant continuous cell lines useful for efficient, large-scale production of MVA.

- May offer improved vaccine production scaling-response times, enhancing epidemic/pandemic preparedness.

#### *Competitive Advantages:*

- Overcomes inefficiencies associated with CEF production of MVA-based vaccines.

*Inventors:* Bernard Moss, Linda Wyatt, Chen Peng, Gilad Sivan, Shira Glushakow-Smith, all of NIAID.

#### *Publications:*

Liu R, Mendez-Rios JD, Peng C, et al. SPI-1 is a missing host-range factor required for replication of the attenuated modified vaccinia Ankara (MVA) vaccine vector in human cells.; *PLoS Pathog.* 2019.

Peng C, Moss B. Repair of a previously uncharacterized second host-range gene contributes to full replication of modified vaccinia virus Ankara (MVA) in human cells. *Proc Natl Acad Sci U S A.* 2020.

Peng, C, Wyatt, L, Glushakow-Smith, SG, Lal-

Nag, M, Weisberg, AS, and Moss, B. Zinc-finger antiviral protein (ZAP) is a restriction factor for replication of modified vaccinia virus Ankara (MVA) in human cells. *PLoS Pathog.* 2020, accepted for publication.

*Intellectual Property:* HHS Reference No. E-076-2019; International Application No. PCT/US20/33788.

*Licensing Contact:* To license this technology, please contact Benjamin Hurley at 240-669-5092 or [benjamin.hurley@nih.gov](mailto:benjamin.hurley@nih.gov), and reference E-076-2019.

*Collaborative Research Opportunity:* The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this invention. For collaboration opportunities, please contact Benjamin Hurley; 240-669-5092, [benjamin.hurley@nih.gov](mailto:benjamin.hurley@nih.gov).

Dated: June 2, 2021.

**Surekha Vathyam,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2021-12179 Filed 6-9-21; 8:45 am]

**BILLING CODE 4140-01-P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2021-0236]

#### Cooperative Research and Development Agreement: Evaluating Unmanned Surface Vessel Characteristics for Coast Guard Platforms

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of intent; request for comments.

**SUMMARY:** The Coast Guard is announcing its intent to enter into a Cooperative Research and Development Agreement (CRADA) with Sea Machines Robotics. Sea Machines Robotics will work with the USCG Research and Development Center (RDC) to modify the currently existing SM300 system installed on the USCG RDC unmanned surface vessel (USV) to determine what parameters and behaviors would be beneficial for USCG mission sets. Additionally, the agreement will investigate the current state of collision avoidance in autonomous unmanned surface vessels (USVs), to develop a better understanding of how these capabilities should be evaluated/regulated in the future. The Coast Guard

invites other potential non-Federal participants, who have the interest and capability to bring similar contributions to this type of research, to submit proposals for consideration in similar CRADAs.

**DATES:** Comments must be submitted to the online docket via <http://www.regulations.gov>, or reach the Docket Management Facility, on or before July 12, 2021.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before July 12, 2021.

**ADDRESSES:** Submit comments online at <http://www.regulations.gov> following website instructions.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice or wish to submit proposals for future CRADAs, contact Derek Meier, Project Official, Surface Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860-271-2600, email [RDC-Info@uscg.mil](mailto:RDC-Info@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to respond to comments in the **Federal Register**, we will respond directly to commenters and may modify our proposal in light of comments.

Comments should be marked with docket number USCG-2021-0236 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you

will be notified when comments are posted or a final rule is published.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

#### Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).<sup>1</sup> A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other type of agreements.

Under the proposed CRADA, the R&D Center will collaborate with one non-Federal participant. Together, the R&D Center and the non-Federal participant will evaluate which USV characteristics and parameters would be beneficial to the USCG mission set. Additionally, both partners will evaluate how collision avoidance technology should be validated on these platforms in the future. We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

1. Provide appropriate staff with expertise to accomplish the above mentioned tasks.
2. Draft test plan.
3. Provide all support resources, including travel for Coast Guard staff that support this CRADA.
4. Obtain, transport, and provide all of the parts, tools, and equipment necessary to prepare the platform for Sea Machines Robotics modifications.
5. Provide the 29RDC and qualified crew for the testing.
6. Provide all resources required for the conduct of the testing on the 29RDC.
7. Execute the testing IAW with the agreed upon test plan.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

<sup>1</sup> The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

1. Provide appropriate staff with expertise to support the above mentioned tasks.

2. Provide all support resources, including travel for Sea Machines Robotics staff who support this CRADA, if required.

3. Provide the technical data package for all equipment, including dimensions, weight, power requirements, and other technical considerations for the additional components to be utilized under this CRADA.

4. Review test plan.

5. Provide any specific training, along with technical support, to those Coast Guard members evaluating the technology proposals submitted for this CRADA.

The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have not more than five single-sided pages (excluding cover page, DD 1494, JF-12, etc.). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding, of and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described, and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering Sea Machines Robotics for participation in this CRADA. This consideration is based on the fact that Sea Machines has demonstrated its technical ability for autonomous USVs and the USCG RDC currently has one of their systems installed aboard their 29 foot vessel. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology assessment effort. The goal of the Coast Guard for this CRADA is to determine what USV characteristics/parameters would be recommended for the operational use of a Coast Guard platform of this size, and also to gain a better understanding of how collision avoidance of USVs should be validated and regulated in the future. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S. This notice is

issued under the authority of 5 U.S.C. 552(a).

**Daniel P. Keane,**

*Commanding Officer, U.S. Coast Guard Research and Development Center.*

[FR Doc. 2021-12162 Filed 6-9-21; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2137]

#### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before September 8, 2021.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS

report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2137, to Rick Sacbbit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbbit@fema.dhs.gov](mailto:patrick.sacbbit@fema.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbbit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbbit@fema.dhs.gov](mailto:patrick.sacbbit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to

review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at [https://www.floodsrp.org/pdfs/srp\\_overview.pdf](https://www.floodsrp.org/pdfs/srp_overview.pdf).

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and

Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Michael M. Grimm,**  
Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
<b>Liberty County, Georgia and Incorporated Areas</b> <b>Project: 19-04-0001S Preliminary Date: November 12, 2020</b>	
City of Flemington .....	City Hall, 156 Old Sunbury Road, Flemington, GA 31313.
City of Hinesville .....	City Hall, 115 East Martin Luther King, Jr. Drive, Hinesville, GA 31313.
Unincorporated Areas of Liberty County .....	Liberty County Courthouse Annex, 112 North Main Street, Room 1200, Hinesville, GA 31313.

[FR Doc. 2021-12130 Filed 6-9-21; 8:45 am]  
BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2140]

**Changes in Flood Hazard Determinations**

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium

rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbabit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472,

(202) 646-7659, or (email) [patrick.sacbabit@fema.dhs.gov](mailto:patrick.sacbabit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at

both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Michael M. Grimm,**  
Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Apache .....	Town of Eagar (21-09-0424P).	The Honorable Bryce Hamblin, Mayor, Town of Eagar, 22 West 2nd Street, Eagar, AZ 85925.	Public Works Department, 1162 South Water Canyon Road, Eagar, AZ 85925.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Jul. 21, 2021 .....	040103
Maricopa .....	City of Peoria (20-09-2036P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 3, 2021 .....	040050
Maricopa .....	City of Peoria (20-09-2066P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 20, 2021 ....	040050
Maricopa .....	City of Surprise (20-09-2202P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 6, 2021 .....	040053
Maricopa .....	Unincorporated Areas of Maricopa County (20-09-2036P).	The Honorable Jack Sellers, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 3, 2021 .....	040037
Maricopa .....	Unincorporated Areas of Maricopa County (20-09-2202P).	The Honorable Jack Sellers, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 6, 2021 .....	040037
Pinal .....	Town of Superior (20-09-1494P).	The Honorable Mila Besich-Lira, Mayor, Town of Superior, 199 North Lobb Avenue, Superior, AZ 85173.	Town Hall, 199 North Lobb Avenue, Superior, AZ 85173.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 5, 2021 .....	040119
Pinal .....	Unincorporated Areas of Pinal County (20-09-1494P).	The Honorable Stephen Q. Miller, Chairman, Board of Supervisors, Pinal County, P.O. Box 827, Florence, AZ 85132.	Pinal County Engineering Division, 31 North Pinal Street, Building F, Florence, AZ 85132.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 5, 2021 .....	040077
California: Riverside.	City of Corona (20-09-0482P).	The Honorable Jacque Casillas, Mayor, City of Corona, 400 South Vicentia Avenue, Corona, CA 92882.	City Hall, 400 South Vicentia Avenue, Corona, CA 92882.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 14, 2021 ....	060250
Colorado: El Paso	Unincorporated Areas of El Paso County (19-08-0704P).	Mr. Mark Waller, Chair, District 2 Commissioner, Centennial Hall, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	EL Paso County, Pikes Peak Regional Building Department, 2880 International Circle, Colorado Springs, CO 80910.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 26, 2021 ....	080059
Idaho:						
Blaine .....	City of Ketchum (20-10-0739P).	The Honorable Neil Bradshaw, Mayor, City of Ketchum, P.O. Box 2315, Ketchum, ID 83340.	City Hall, 480 East Avenue North, Ketchum, ID 83340.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 2, 2021 .....	160023
Blaine .....	Unincorporated Areas of Blaine County (20-10-0739P).	Ms. Angenie McCleary, Vice Chair, Blaine County Commissioners, 206 1st Avenue South, Suite 300, Hailey, ID 83333.	Blaine County Planning & Zoning, 219 1st Avenue South, Suite 208, Hailey, ID 83333.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 2, 2021 .....	165167
Illinois: Kane .....	Village of Montgomery (21-05-0213P).	The Honorable Matthew Brolley, Village President, Village of Montgomery, 200 North River Street, Montgomery, IL 60538.	Village Hall, 200 North River Street, Montgomery, IL 60538.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 10, 2021 ....	170328

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Kansas: Johnson ..	City of Shawnee (20-07-0627P).	The Honorable Michelle Distler, Mayor, City of Shawnee, City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	City Hall, 11110 Johnson Drive, Shawnee, KS 66203.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 1, 2021 .....	200177
Nevada:						
Elko .....	City of Elko (20-09-1987P).	The Honorable Reece Keener, Mayor, City of Elko, 1751 College Avenue, Elko, NV 89801.	City Hall, 1751 College Avenue, Elko, NV 89801.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 5, 2021 .....	320010
Washoe .....	City of Reno (21-09-0352P).	The Honorable Hillary Schieve, Mayor, City of Reno, 1 East 1st Street, Reno, NV 89501.	City Hall, 1 East 1st Street, Reno, NV 89501.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 10, 2021 ....	320020
Washoe .....	Unincorporated Areas of Washoe County (21-09-0352P).	The Honorable Bob Lucey, Chairman, Board of Commissioners, Washoe County, 1001 East 9th Street, Reno, NV 89512.	Washoe County Administration Building, Department of Public Works, 1001 East 9th Street, Reno, NV 89512.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 10, 2021 ....	320019
Ohio:						
Fairfield .....	City of Lancaster (21-05-0317P).	The Honorable David L. Scheffler, Mayor, City of Lancaster, 104 East Main Street, Room 101, Lancaster, OH 43130.	City Building Department, 121 East Chestnut Street, Lancaster, OH 43130.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep 8, 2021 .....	390161
Fairfield .....	Unincorporated Areas of Fairfield County (21-05-0317P).	Mr. Dave Levacy, Commissioner, Fairfield County Commissioners, 210 East Main Street, Room 301, Lancaster, OH 43130.	Fairfield County Regional Planning Commission, 210 East Main Street, Room 104, Lancaster, OH 43130.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep 8, 2021 .....	390158
Oregon:						
Lane .....	City of Eugene (20-10-1089P).	The Honorable Lucy Vinis, Mayor, City of Eugene, 101 West 10th Avenue, 2nd Floor, Eugene, OR 97401.	Planning Department, 99 West 10th Avenue, Eugene, OR 97401.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 18, 2021 ....	410122
Lane .....	Unincorporated Areas of Lane County (20-10-1089P).	Ms. Heather Buch, Commissioner, Board of County Commissioners, Lane County, Public Service Building, 125 East 8th Avenue, Eugene, OR 97401.	Lane County, Customer Service Center, 3050 North Delta Highway, Eugene, OR 97408.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 18, 2021 ....	415591
Washington:						
King .....	City of Kent (21-10-0511P).	The Honorable Dana Ralph, Mayor, City of Kent, 220 4th Avenue South, Kent, WA 98032.	City Hall, 220 4th Avenue South, Kent, WA 98032.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 27, 2021 ....	530080
Yakima .....	City of Yakima (20-10-1163P).	The Honorable Patricia Byers, Mayor, City of Yakima, 129 North 2nd Street, Yakima, WA 98901.	City Hall, 129 North 2nd Street, Yakima, WA 98901.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 7, 2021 .....	530311
Yakima .....	Unincorporated Areas of Yakima County (20-10-1163P).	Mr. Ron Anderson, District 2, Commissioner, Yakima County, 128 North 2nd Street, Room 232, Yakima, WA 98901.	Yakima County Public Services, 128 North 2nd Street, Yakima, WA 98901.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 7, 2021 .....	530217
Wisconsin:						
Brown .....	Village of Hobart (21-05-0115P).	Mr. Rich Heidel, President, Village of Hobart, 2990 South Pine Tree Road, Hobart, WI 54155.	Village Hall, 2456 Glendale Avenue, Green Bay, WI 54313.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 6, 2021 .....	550626
Ozaukee .....	City of Cedarburg (19-05-5425P).	The Honorable Mike O'Keefe, Mayor, City of Cedarburg, W63 N645 Washington Avenue, Cedarburg, WI 53012.	City Hall, W63 N645 Washington Avenue, Cedarburg, WI 53012.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 25, 2021 ....	550312
Ozaukee .....	Unincorporated Areas of Ozaukee County (19-05-5425P).	Mr. Lee Schlenvogt, Chairperson, Ozaukee County Board, 121 West Main Street, Port Washington, WI 53074.	Ozaukee County Administration Center, 121 West Main Street, Port Washington, WI 53074.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 25, 2021 ....	550310
Ozaukee .....	Village of Grafton (19-05-5425P).	Mr. James A. Brunnuell, Village President, Village of Grafton, 860 Badger Circle, Grafton, WI 53024.	Village Hall, 1971 Washington Street, Grafton, WI 53024.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 25, 2021 ....	550314

[FR Doc. 2021-12127 Filed 6-9-21; 8:45 am]

BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2129]

**Proposed Flood Hazard Determinations; Correction**

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice; correction.

**SUMMARY:** On May 7, 2021, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table to be used in lieu of the erroneous information. The table provided here represents the proposed flood hazard determinations and communities affected by Dallas County, Texas and Incorporated Areas.

**DATES:** Comments are to be submitted on or before September 8, 2021.

**ADDRESSES:** The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2129, to Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and

Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacibit@fema.dhs.gov](mailto:patrick.sacibit@fema.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacibit@fema.dhs.gov](mailto:patrick.sacibit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/finx\\_main.html](https://www.floodmaps.fema.gov/fhm/finx_main.html).

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and

technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at [https://floodsrp.org/pdfs/srp\\_fact\\_sheet.pdf](https://floodsrp.org/pdfs/srp_fact_sheet.pdf).

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

**Correction**

In the proposed flood hazard determination notice published at 86 FR 24642 in the May 7, 2021, issue of the **Federal Register**, FEMA published a table titled "Dallas County, Texas and Incorporated Areas". This table contained inaccurate information as to the communities affected by the proposed flood hazard determinations featured in the table. In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

Community	Community map repository address
<b>Dallas County, Texas and Incorporated Areas Project: 20-06-0070S Preliminary Date: November 13, 2020</b>	
City of Carrollton .....	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.
City of Cedar Hill .....	Public Works Department, 285 Uptown Boulevard, Cedar Hill, TX 75104.
City of Combine .....	City Hall, 123 Davis Road, Combine, TX 75159.
City of Coppell .....	City Engineering Department, 265 East Parkway Boulevard, Coppell, TX 75019.
City of Dallas .....	Dallas Water Utilities, Stormwater Operations, 320 East Jefferson Boulevard, Room 312, Dallas, TX 75203.
City of Duncanville .....	Public Works Department, 203 East Wheatland Road, Duncanville, TX 75116.
City of Farmers Branch .....	Public Works Department, 13000 William Dodson Parkway, Farmers Branch, TX 75234.
City of Grand Prairie .....	Municipal Complex, Stormwater Department, 300 West Main Street, Grand Prairie, TX 75050.

Community	Community map repository address
City of Hutchins .....	City Hall, 321 North Main Street, Hutchins, TX 75141.
City of Irving .....	Capital Improvement Program Department, 825 West Irving Boulevard, Irving, TX 75060.
City of Lancaster .....	Development Services, 700 East Main Street, Lancaster, TX 75146.
City of Lewisville .....	Engineering Division, 151 West Church Street, Lewisville, TX 75057.
City of Mesquite .....	Engineering Division, 1515 North Galloway Avenue, Mesquite, TX 75149.
City of Seagoville .....	City Hall, 702 North Highway 175, Seagoville, TX 75159.
City of University Park .....	University Park Community Development Department, 4420 Worcola Street, Dallas, TX 75206.
City of Wilmer .....	Public Works Department, 128 North Dallas Avenue, Wilmer, TX 75172.
Town of Addison .....	Service Center, Public Works and Engineering, 16801 Westgrove Drive, Addison, TX 75001.
Town of Highland Park .....	Engineering Department, 4700 Drexel Drive, Highland Park, TX 75205.
Town of Sunnyvale .....	Development Services Department, 127 North Collins Road, Sunnyvale, TX 75182.
Unincorporated Areas of Dallas County .....	Dallas County Public Works Department, 411 Elm Street, 4th Floor, Dallas, TX 75202.

[FR Doc. 2021-12126 Filed 6-9-21; 8:45 am]

BILLING CODE 9110-12-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2135]

**Proposed Flood Hazard Determinations**

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and

others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before September 8, 2021.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2135, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information



regarding the SRP process can be found online at [https://www.floodsrp.org/pdfs/srp\\_overview.pdf](https://www.floodsrp.org/pdfs/srp_overview.pdf).

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelim>

download and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online

through the FEMA Map Service Center at <https://msc.fema.gov> for comparison. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Michael M. Grimm,**  
Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
<b>Mendocino County, California and Incorporated Areas</b> Project: 16-09-2624S Preliminary Date: January 14, 2021	
City of Willits .....	City Hall, 111 East Commercial Street, Willits, CA 95490.
Unincorporated Areas of Mendocino County .....	Mendocino County Planning and Building Services Department, 860 North Bush Street, Ukiah, CA 95482.
<b>Plymouth County, Iowa and Incorporated Areas</b> Project: 18-07-0013S Preliminary Date: November 23, 2020	
City of Akron .....	City Hall, 220 Reed Street, Akron, IA 51001.
City of Brunsville .....	City Hall, 310 Oak Street, Brunsville, IA 51008.
City of Hinton .....	City Hall, 205 West Main Street, Hinton, IA 51024.
City of Kingsley .....	City Hall, 222 Main Street, Kingsley, IA 51028.
City of Le Mars .....	City Hall, 40 Central Avenue Southeast, Le Mars, IA 51031.
City of Merrill .....	City Hall, 608 Main Street, Merrill, IA 51038.
City of Oyens .....	City Hall, 230 Main Street, Oyens, IA 51045.
City of Remsen .....	City Hall, 8 West 2nd Street, Remsen, IA 51050.
City of Struble .....	City Hall, 210 William Street, Struble, IA 51031.
City of Westfield .....	City Hall, 223 Union Street, Westfield, IA 51062.
Unincorporated Areas of Plymouth County .....	Plymouth County Annex Building, 214 3rd Avenue Southeast, Le Mars, IA 51031.
<b>Morris County, Kansas and Incorporated Areas</b> Project: 20-07-0040S Preliminary Date: December 4, 2020	
City of Council Grove .....	City Hall, 205 North Union Street, Council Grove, KS 66846.
City of Dunlap .....	City Hall, 526 Commercial Street, Dunlap, KS 66848.
City of Parkerville .....	Morris County Courthouse, 501 West Main Street, Council Grove, KS 66846.
Unincorporated Areas of Morris County .....	Morris County Courthouse, 501 West Main Street, Council Grove, KS 66846.
<b>Lake of the Woods County, Minnesota and Incorporated Areas</b> Project: 17-05-1796S Preliminary Date: May 29, 2020	
City of Baudette .....	City Hall, 106 West Main Street, Baudette, MN 56623.
City of Williams .....	City Hall, 250 Main Street, Williams, MN 55686.
Red Lake Band of Chippewa Tribe .....	Red Lake Nation Government Center, 15484 Migizi Drive, Red Lake, MN 56671.
Unincorporated Areas of Lake of the Woods County .....	Lake of the Woods County Government Center, 206 8th Avenue Southeast, Baudette, MN 56623.
<b>Olmsted County, Minnesota and Incorporated Areas</b> Project: 12-05-2135S Preliminary Date: May 29, 2020	
Unincorporated Areas of Olmsted County .....	Olmsted County Planning, Land Use, and Zoning Department, 2122 Campus Drive Southeast, Suite 100, Rochester, MN 55904.
<b>Montgomery County, Ohio and Incorporated Areas</b> Project: 14-05-4202S Preliminary Date: November 30, 2020	
City of Centerville .....	Municipal Government Center, 100 West Spring Valley Road, Centerville, OH 45458.
City of Dayton .....	Building Inspection Department, 371 West Second Street, Dayton, OH 45402.
City of Kettering .....	Kettering Government Center, 3600 Shroyer Road, Kettering, OH 45429.
Unincorporated Areas of Montgomery County .....	Montgomery County Administration Building, 451 West Third Street, Dayton, OH 45422.

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2141]

**Changes in Flood Hazard Determinations**

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report

in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer

of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Michael M. Grimm,**

*Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona: Santa Cruz	Unincorporated areas of Santa Cruz County (20-09-2050P).	The Honorable Manny Ruiz, Chairman, Santa Cruz County Board of Supervisors, District 1, 2150 North Congress Drive, Suite 119, Nogales, AZ 85621.	Santa Cruz County Complex, 2150 North Congress Drive, Suite 116, Nogales, AZ 85621.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 25, 2021 ....	040090
Colorado: Eagle	Town of Gypsum (20-08-0718P).	The Honorable Steve Carver, Mayor, Town of Gypsum, P.O. Box 130, Gypsum, CO 81637.	Town Hall, 50 Lundgren Boulevard, Gypsum, CO 81637.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 6, 2021 .....	080002
Eagle	Unincorporated areas of Eagle County (20-08-0718P).	Mr. Jeff Shroll, Eagle County Manager, P.O. Box 850, Eagle, CO 81631.	Eagle County Engineering Department, 500 Broadway Street, Eagle, CO 81631.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 6, 2021 .....	080051

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Florida: Lee	City of Bonita Springs (21-04-0614P).	The Honorable Rick Steinmeyer, Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135.	Community Development Department, 9220 Bonita Beach Road, Suite 111, Bonita Springs, FL 34135.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 13, 2021 ....	120680
Palm Beach	Unincorporated areas of Palm Beach County (20-04-5100P).	The Honorable Verdenia C. Baker, Palm Beach County Administrator, 301 North Olive Avenue, Suite 1201, West Palm Beach, FL 33401.	Palm Beach County Building Division, 2300 North Jog Road, West Palm Beach, FL 33411.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 9, 2021 .....	120192
Sarasota	Unincorporated areas of Sarasota County (21-04-0474P).	The Honorable Alan Maio, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 1, 2021 .....	125144
Sarasota	Unincorporated areas of Sarasota County (21-04-1626P).	The Honorable Alan Maio, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 27, 2021 ....	125144
Georgia: DeKalb	Unincorporated areas of DeKalb County (21-04-0617P).	The Honorable Michael L. Thurmond, Chief Executive Officer, DeKalb County, 1300 Commerce Drive, 6th Floor, Decatur, GA 30030.	DeKalb County Roads and Drainage Department, 727 Camp Road, Decatur, GA 30032.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 10, 2021 ....	130065
North Carolina: Wake	Town of Apex (20-04-1215P).	The Honorable Jacques Gilbert, Mayor, Town of Apex, P.O. Box 250, Apex, NC 27502.	Engineering Department, 73 Hunter Street, Apex, NC 27502.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 24, 2021 ....	370467
Wake	Unincorporated areas of Wake County (20-04-1215P).	The Honorable Matt Calabria, Chairman, Wake County Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Wake County Environmental Services Department, 336 Fayetteville Street, Raleigh, NC 27601.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 24, 2021 ....	370368
South Carolina: Charleston	Town of Sullivan's Island (21-04-2046P).	The Honorable Patrick M. O'Neil, Mayor, Town of Sullivan's Island, 2056 Middle Street, Sullivan's Island, SC 29482.	Building Department, 2056 Middle Street, Sullivan's Island, SC 29482.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 13, 2021 ....	455418
Dorchester	Unincorporated areas of Dorchester County (21-04-0277P).	Mr. Jason L. Ward, Dorchester County Administrator, 201 Johnston Street, St. George, SC 29477.	Dorchester County Building Services Department, 500 North Main Street Summerville, SC 29483.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 27, 2021 ....	450068
Richland	City of Columbia (20-04-4501P).	The Honorable Stephen K. Benjamin, Mayor, City of Columbia, 1737 Main Street, Columbia, SC 29201.	Water Department, 1136 Washington Street, Columbia, SC 29201.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 20, 2021 ....	450172
Richland	Unincorporated areas of Richland County (20-04-4501P).	The Honorable Paul Livingston, Chairman, Richland County Council, 2308 Park Street, Columbia, SC 29201.	Richland County Floodplain Management Department, 2020 Hampton Street, Columbia, SC 29204.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 20, 2021 ....	450170
Texas: Bexar	City of Converse (20-06-1620P).	The Honorable Al Suarez, Mayor, City of Converse, 403 South Seguin Road, Converse, TX 78109.	City Hall, 403 South Seguin Road, Converse, TX 78109.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 23, 2021 ....	480038
Bexar	City of San Antonio (20-06-3462P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 114 West Commerce Street, San Antonio, TX 78205.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 23, 2021 ....	480045
Bexar	Unincorporated areas of Bexar County (20-06-1399P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 30, 2021 ....	480035

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Bexar	Unincorporated areas of Bexar County (20-06-3173P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 9, 2021 .....	480035
Collin	City of Celina (20-06-3148P).	The Honorable Sean Terry, Mayor, City of Celina, 142 North Ohio Street, Celina, TX 75009.	City Hall, 142 North Ohio Street, Celina, TX 75009.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 24, 2021 ....	480133
Collin	Unincorporated areas of Collin County (20-06-3461P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 16, 2021 ....	480130
Coryell	City of Copperas Cove (20-06-3238P).	Mr. Ryan Haverlah, Manager, City of Copperas Cove, 914 South Main Street, Suite D, Copperas Cove, TX 76522.	Development Services Department, 914 South Main Street, Suite G, Copperas Cove, TX 76522.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 23, 2021 ....	480155
Coryell	Unincorporated areas of Coryell County (20-06-3238P).	The Honorable Roger A. Miller, Coryell County Judge, 800 East Main Street, Suite A, Gatesville, TX 76528.	Coryell County Environmental/On-Site Sewage Facilities Office, 210 South 7th Street, Gatesville, TX 76528.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 23, 2021 ....	480768
Denton	Unincorporated areas of Denton County (21-06-0565P).	The Honorable Andy Eads, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Public Works, Engineering Department, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 13, 2021 ....	480774
Tarrant	City of Fort Worth (21-06-0038P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Aug. 30, 2021 ....	480596
Williamson	Unincorporated areas of Williamson County (21-06-0017P).	The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Engineering Department, 3151 Southeast Inner Loop, Georgetown, TX 78626.	<a href="https://msc.fema.gov/portal/advanceSearch">https://msc.fema.gov/portal/advanceSearch</a> .	Sep. 16, 2021 ....	481079

[FR Doc. 2021-12132 Filed 6-9-21; 8:45 am]

BILLING CODE 9110-12-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2021-0002; Internal Agency Docket No. FEMA-B-2139]

#### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting

Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before September 8, 2021.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/>

and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2139, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) [patrick.sacbibit@fema.dhs.gov](mailto:patrick.sacbibit@fema.dhs.gov); or visit the FEMA Mapping and Insurance eXchange (FMIX) online at [https://www.floodmaps.fema.gov/fhm/fmx\\_main.html](https://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard

determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any

request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at [https://www.floodsrp.org/pdfs/srp\\_overview.pdf](https://www.floodsrp.org/pdfs/srp_overview.pdf).

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location [https://hazards.fema.gov/femportal/prelim\\_download](https://hazards.fema.gov/femportal/prelim_download) and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

**Michael M. Grimm,**  
Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
<b>Baldwin County, Georgia and Incorporated Areas</b> Project: 18-04-0003S Preliminary Date: June 12, 2020	
City of Milledgeville .....	City Water Department, 119 East Hancock Street, Milledgeville, GA 31061.
Unincorporated Areas of Baldwin County .....	Baldwin County Planning and Development, 1601 North Columbia Street, Suite 200, Milledgeville, GA 31061.
<b>Jasper County, Georgia and Incorporated Areas</b> Project: 18-04-0003S Preliminary Date: June 12, 2020	
City of Monticello .....	City Hall, 123 West Washington Street, Monticello, GA 31064.
Unincorporated Areas of Jasper County .....	Jasper County Courthouse, Planning and Zoning Department, 126 West Greene Street, Suite 17, Monticello, GA 31064.
<b>Jones County, Georgia and Incorporated Areas</b> Project: 18-04-0003S Preliminary Date: June 12, 2020	
Unincorporated Areas of Jones County .....	Jones County Planning and Zoning Department, 166 Industrial Boulevard, Gray, GA 31032.

[FR Doc. 2021-12131 Filed 6-9-21; 8:45 am]

BILLING CODE 9111-12-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-HQ-FAC-2021-N032;  
FXFR13360900000-FF09F14000-201]

**Aquatic Nuisance Species Task Force Meeting**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of teleconference/web meeting.

**SUMMARY:** The U.S. Fish and Wildlife Service gives notice of a teleconference/web meeting of the Aquatic Nuisance Species (ANS) Task Force, in accordance with the Federal Advisory Committee Act.

**DATES:**

*Teleconference/web meeting:* The ANS Task Force will meet Monday, Tuesday, and Wednesday, June 28-30, 2021, from 12 p.m. to 4 p.m. each day (Eastern Time).

*Registration:* Registration is required. The deadline for registration is June 25, 2021.

*Accessibility:* The deadline for accessibility accommodation requests is

June 21, 2021. Please see *Accessibility Information*, below.

**ADDRESSES:** The meeting will be held via teleconference and broadcast over the internet. To register and receive the web address and telephone number for participation, contact the Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**) or visit the ANS Task Force website at <https://anstaskforce.gov>.

**FOR FURTHER INFORMATION CONTACT:** Susan Pasko, Executive Secretary, ANS Task Force, by telephone at (703) 358-2466, or by email at [Susan\\_Pasko@fws.gov](mailto:Susan_Pasko@fws.gov). If you use a telecommunications device for the deaf

(TDD), please call the Federal Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, and is composed of Federal and ex-officio members. The ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic invasive species; to monitor, control, and study such species; and to disseminate related information.

The meeting agenda will include: ANS Task Force subcommittee reports and ANS Task Force discussion on priority outputs to advance the goals identified in the ANS Task Force Strategic Plan for 2020–2025; presentation by the U.S Geological Survey on new species occurrences in the United States; updates from ANS Task Force member agencies and interagency invasive species organizations; recommendations by the ANS Task Force regional panels, and public comment. The final agenda and other related meeting information will be posted on the ANS Task Force website, <https://anstaskforce.gov>.

#### Public Input

If you wish to listen to the webinar by telephone, listen and view through the internet, provide oral public comment by phone, or provide a written comment for the ANS Task Force to consider, contact the ANS Task Force Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**). Written comments should be received no later than Friday, June 25, 2021, to be considered by the Task Force during the meeting.

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Interested parties should contact the ANS Task Force Executive Secretary, in writing (see **FOR FURTHER INFORMATION CONTACT**), for placement on the public speaker list for this teleconference. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Executive Secretary up to 30 days following the meeting. Requests to address the ANS Task Force during the teleconference will be accommodated in the order the requests are received.

#### Accessibility Information

Requests for sign language interpretation services, closed captioning, or other accessibility

accommodations should be directed to the ANS Task Force Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**) by close of business Monday, June 21, 2021.

#### Public Disclosure

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.

**Authority:** 5 U.S.C. Appendix 2.

Dated: June 4, 2021.

**David W. Hoskins,**

*Co-Chair, Aquatic Nuisance Species Task Force.*

[FR Doc. 2021-12116 Filed 6-9-21; 8:45 am]

**BILLING CODE 4333-15-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1560-1564 (Preliminary)]

### Raw Honey From Argentina, Brazil, India, Ukraine, and Vietnam

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of raw honey from Argentina, Brazil, India, Ukraine, and Vietnam, provided for in subheading 0409.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (“LTFV”).<sup>2</sup>

#### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the

<sup>1</sup> The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> 86 FR 26897, May 18, 2021.

Commission's rules, upon notice from the U.S. Department of Commerce (“Commerce”) of affirmative preliminary determinations in the investigations under § 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under § 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

#### Background

On April 21, 2021, American Honey Producers Association, Bruce, South Dakota, and the Sioux Honey Association, Sioux City, Iowa filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured by reason of LTFV imports of raw honey from Argentina, Brazil, India, Ukraine, and Vietnam. Accordingly, effective April 21, 2021, the Commission instituted antidumping duty investigation Nos. 731-TA-1560-1564 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 27, 2021 (86 FR 22265). In light of the restrictions on access to the Commission building due to the COVID-19 pandemic, the Commission conducted its conference through written testimony and video conference. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to § 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determinations in these investigations on June 7, 2021. The views of the Commission are contained in USITC Publication 5204 (June 2021), entitled *Raw Honey from Argentina, Brazil, India, Ukraine, and Vietnam: Investigation Nos. 731-TA-1560-1564 (Preliminary)*.

By order of the Commission.

Issued: June 7, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-12223 Filed 6-9-21; 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—Integrated Photonics Institute for Manufacturing Innovation Operating Under the Name of the American Institute for Manufacturing Integrated Photonics

Notice is hereby given that, on May 10, 2021, 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 Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics (“AIM Photonics”) 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, Anametric, Inc., Austin, TX; L3 Harris Technologies, Inc., Melbourne, FL; and 3M Company, Saint Paul, MN have been added as parties to this venture.

Also, Boeing Company, Chicago, IL; Corning Research and Development Corporation, Corning, NY; Morton Photonics, Inc., West Friendship, MD; ESL Federal Credit Union, Rochester, NY; OndaVia, Inc., Hayward, CA; Silyb Wafer Services, Gig Harbor, WA; University of Akron, Akron, OH; and Bra-Ket Science, Inc., Austin, TX 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 AIM Photonics intends to file additional written notifications disclosing all changes in membership.

On June 16, 2016, AIM Photonics 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 25, 2016 (81 FR 48450).

The last notification was filed with the Department on January 21, 2021. A

notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 12, 2021 (86 FR 9375).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021-12177 Filed 6-9-21; 8:45 am]

**BILLING CODE 4410-11-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 May 13, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), 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, AeroVironment, Inc., Simi Valley, AL; Alion Science and Technology Corporation, McLean, VA; Autonodyne LLC, Boston, MA; Azimuth Corporation, Fairborn, OH; Bangham Engineering, Inc., Huntsville, AL; Chemring Energetic Devices, Downers Grove, IL; Concurrent Real-Time, Pompano Beach, FL; ElectraWatch an Austal USA Company, Charlottesville, VA; Fairbanks Morse, Beloit, WI; General Atomics Aeronautical Systems, Inc. (GA-ASI), Poway, CA; H6 Systems Inc., Nashua, NH; JEM Engineering, LLC, Laurel, MD; John H. Northrop and Associates, Clifton, VA; Kutta Technologies, Inc., Phoenix, AZ; Major Tool & Machine Inc., Indianapolis, IN; Metron, Inc., Reston, VA; Microwave Photonic Systems, Inc., West Chester, PA; NAL Research Corporation, Manassas, VA; Paragon Force Inc., Bloomfield, IN; PECO, Inc., Clackamas, OR; Pison Technology, Inc., Boston, MA; Prescient Edge Corporation, McLean, VA; Ravn Inc., San Francisco, CA; Redpoint Engineering Inc., Beavercreek, OH; Rhein Tech Laboratories, Inc., Herndon, VA; Rocket Communications Inc., San Francisco, CA; Saildrone, Inc., Alameda, CA; SEACORP, LLC, Middletown, RI; Smartsheet Inc., Bellevue, WA; Sol Firm LLC, Mount Pleasant, SC; Telesat U.S. Services, LLC, Arlington, VA; Terma

North America, Warner Robins, GA; Titan Systems LLC, Leonardtown, MD; Voxel Innovations Inc., Raleigh, NC; Wave Motion Launch Corporation, Mountlake Terrace, WA; Zin Solutions, Inc. DBA Axiom Tower, Vero Beach, FL, have been added as parties to this venture and the members of the National Armaments Consortium (NAC), whose last filing can be found at (86 FR 25887).

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 January 22, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 12, 2021 (86 FR 9374).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021-12178 Filed 6-9-21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Utility Broadband Alliance

Notice is hereby given that, on May 4, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Utility Broadband Alliance (“UBBA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: 4RF USA, Denver, CO; ADB Companies, Pacific, MO; Aetheros Inc., San Francisco, CA; Alpha Wireless, County Laois, IRELAND; Amdocs

Management Ltd, London, UNITED KINGDOM; Ameren Services, St. Louis, MO; Anterix, Woodland Park, NJ; ATT Business, Dallas, TX; BEC Technologies, Richardson, TX; Blinq Network, Markham, CANADA; Bridgewater Group Consulting, Irvine, CA; Burns and McDonnell, Kansas City, MO; Cisco, San Jose, CA; Council Rock, Rochester, NY; CrescoNet, San Francisco, CA; Encore Networks, Chantilly, VA; Ericsson, Plano, TX; Evergy, Kansas City, MO; GE Industrial Communications, Rochester, NY; Hitachi-ABB, Raleigh, NC; JEA, Jacksonville, FL; K and A Engineering, White Plains, NY; L3 Harris, Rochester, NY; Mimomax Wireless, Christchurch, NEW ZEALAND; Motorola Solutions, Chicago, IL; Multi Tech Systems, Mounds View, MN; Nokia, Coppell, TX; NovaTech, Lenexa, KS; National Rural Telecommunications Cooperative, Herndon, VA; NY Power Authority (NYPA), White Plains, NY; Palmetto Technology Associates, Kiawah Island, SC; Puloli, Inc., San Francisco, CA; Southern California Edison, Rosemead, CA; SouthernLinc, Atlanta, GA; Telit Wireless Solutions, Durham, NC; World Wide Technology, Maryland Heights, MO; and Xcel Energy, Minneapolis, MN.

UBBA was formed as a Delaware non-stock member corporation. The general area of UBBA's planned activity is to empower utilities and ecosystem partners to champion the development of utility broad-band networks as a key enabler of the utility of the future, and to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Membership in UBBA remains open and UBBA intends to file additional written notifications disclosing all changes in membership.

**Suzanne Morris,**  
Chief, Premier and Division Statistics,  
Antitrust Division.

[FR Doc. 2021-12180 Filed 6-9-21; 8:45 am]

**BILLING CODE 4410-11-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA-847]

**Importer of Controlled Substances  
Application: Cambrex Charles City**

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Cambrex Charles City has applied to be registered as an importer

of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before July 12, 2021. Such persons may also file a written request for a hearing on the application on or before July 12, 2021.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on May 6, 2021, Cambrex Charles City, 1205 11th Street, Charles City, Iowa 50616-3466, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
4-Anilino-N-Phenethyl-4-Piperidine (ANPP).	8333	II
Phenylacetone .....	8501	II
Coca leaves .....	9040	II
Opium, raw .....	9600	II
Poppy Straw Concentrate.	9670	II

The company plans to import the listed controlled substances for internal use and to bulk manufacture other controlled substances in Active Pharmaceutical Ingredient (API) form for distribution to its customers. No other activity for these drug codes is authorized for this registration.

**William T. McDermott,**  
Assistant Administrator.

[FR Doc. 2021-12215 Filed 6-9-21; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA-844]

**Importer of Controlled Substances  
Application: Fisher Clinical Services, Inc.**

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Fisher Clinical Services, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before July 12, 2021. Such persons may also file a written request for a hearing on the application on or before July 12, 2021.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on May 17, 2021, Fisher Clinical Services, Inc. 7554 Schantz Road, Allentown, Pennsylvania 18106-9032 applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract .....	7350	I

The company plans to import the listed controlled substances for clinical trials only. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the



import of the Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

**William T. McDermott,**  
Assistant Administrator.

[FR Doc. 2021-12212 Filed 6-9-21; 8:45 am]  
BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA-845]

**Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturer of Marihuana: Maridose, LLC**

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic class(es) of controlled substances listed in schedule I. DEA intends to evaluate this and other pending applications according to its regulations governing the program of growing marihuana for scientific and medical research under DEA registration.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefor, may file written comments on or objections to the issuance of the proposed registration on or before August 9, 2021.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW 8701 Morrisette Drive, Springfield, Virginia 22152. To ensure proper handling of comments, please reference Docket No—DEA-845 in all correspondence, including attachments.

**SUPPLEMENTARY INFORMATION:** The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic class(es), and applicants therefor, may file written comments on or objections

of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (APIs) for product development and distribution to DEA registered researchers. If the application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a bulk manufacturer of marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a). In addition to seeking to produce marihuana extract, this applicant is separately seeking to cultivate marihuana. See Notice of Application, Bulk Manufacturers of Marihuana, 84 FR 44920, 44922 (Aug. 27, 2019). DEA thus will conduct this evaluation in the manner described in the rule published at 85 FR 82333 on December 18, 2020, and reflected in DEA regulations at 21 CFR part 1318.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on May 6, 2021, Maridose, LLC., 74 Orion Street, Brunswick, Maine 04011, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana Extract .....	7350	I

**William T. McDermott,**  
Assistant Administrator.

[FR Doc. 2021-12213 Filed 6-9-21; 8:45 am]  
BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA-843]

**Importer of Controlled Substances Application: National Center for Natural Products Research**

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** National Center for Natural Products Research has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before July 12, 2021. Such persons may also file a written request for a hearing on the application on or before July 12, 2021.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on April 14, 2021, National Center for Natural Products Research, 806 Hathorn Road, 135 Coy Waller Lab, University, Mississippi 38677-1848, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract .....	7350	I
Marihuana .....	7360	I
Tetrahydrocannabinols ...	7370	I

The company plans to acquire new genetic materials with improved Cannabinoids for research and manufacturing purposes. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA-approved or non-

approved finished dosage forms for commercial sale.

**William T. McDermott,**  
Assistant Administrator.

[FR Doc. 2021-12209 Filed 6-9-21; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Notice of Lodging of Proposed Consent Decree Under the Clean Air Act**

On June 2, 2021, the Department of Justice lodged with the United States District Court for the Southern District of Indiana a Consent Decree in *United States and State of Indiana v. Lone Star Industries, Inc.* Civ. No. 2:21-cv-233-JRS-MJD.

The proposed Consent Decree settles claims brought by the United States and State of Indiana against Lone Star for violations of the Clean Air Act and Title 13 of the Indiana Code (including regulations and permits issued thereunder) at the cement manufacturing facility it owns and operates in Greencastle, Indiana. The Consent Decree resolves these claims and requires Lone Star to (1) pay a civil penalty of \$729,000 to be split evenly between the state and United States; (2) implement specified measures designed to prevent the continuation or reoccurrence of the violations alleged, and (3) complete various mitigation projects to offset harm caused by its past violations.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *United States and State of Indiana v. Lone Star Industries, Inc.* D.J. Ref. No. 90-5-2-1-09889/4. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email .....	pubcomment-ees.enrd@usdoj.gov.
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>.

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$12.25 (25 cents per page reproduction cost) payable to the United States Treasury.

**Patricia A. McKenna,**  
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021-12115 Filed 6-9-21; 8:45 am]

**BILLING CODE 4410-15-P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Notice of a Change in Status of the Extended Benefit (EB) Program for Colorado**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

This notice announces a change in benefit period eligibility under the EB program that has occurred since the publication of the last notice regarding the State’s EB status:

- Based on the data released by the Bureau of Labor Statistics on May 21, 2021, the seasonally-adjusted TUR for Colorado fell below the 6.5% threshold necessary to remain “on” in EB. Therefore the payable period in EB for Colorado will end on June 12, 2021.

The trigger notice covering state eligibility for the EB program can be found at: [http://ows.doleta.gov/unemploy/claims\\_arch.as](http://ows.doleta.gov/unemploy/claims_arch.as).

**Information for Claimants**

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program,

should contact their State Workforce Agency.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance Room S-4524, Attn: Thomas Stengle, 200 Constitution Avenue NW, Washington, DC 20210, telephone number (202) 693-2991 (this is not a toll-free number) or by email: [Stengle.Thomas@dol.gov](mailto:Stengle.Thomas@dol.gov).

Signed in Washington, DC.

**Suzan G. LeVine,**  
Principal Deputy Assistant Secretary for Employment and Training.

[FR Doc. 2021-12158 Filed 6-9-21; 8:45 am]

**BILLING CODE 4510-FW-P**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**Petitions for Modification of Application of Existing Mandatory Safety Standards**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice includes the summaries of three petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petitions must be received by MSHA’s Office of Standards, Regulations, and Variances on or before July 12, 2021.

**ADDRESSES:** You may submit your comments including the docket number of the petition by any of the following methods:

1. *Electronic Mail:* [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202-693-9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: Jessica D. Senk, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist’s desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Jessica Senk, Office of Standards,

Regulations, and Variances at 202–693–9440 (voice), *Senk.Jessica@dol.gov* (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

## I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

## II. Petitions for Modification

*Docket Number:* M–2021–022–C.

*Petitioner:* Buchanan Minerals, LLC, 1636 Honaker Branch Road, Oakwood, Virginia (Zip 24639).

*Mine:* Buchanan No. 1 Mine, MSHA ID No. 44–04856, located in Buchanan County, Virginia.

*Regulation Affected:* 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

*Modification Request:* The petitioner requests a modification of the existing standard, 30 CFR 75.507–1(a), as it relates to the use of an alternative method of respirable dust protection for miners at the Buchanan No. 1 Mine in Virginia. Specifically, the petitioner is applying to use a battery powered respirable protection unit called the CleanSpace EX Powered Respirator (CleanSpace EX) in return air outby the last open crosscut.

The petitioner states that:

(a) The petitioner is seeking an alternative to the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection that can provide long-term health benefits.

(b) The 3M Airstream helmet has been used in mines for over 40 years.

(c) 3M has recently faced component disruptions for the Airstream product. 3M globally discontinued the Airstream on June 1, 2020. The ability to order an Airstream system and components ended in February 2020. Components were available through June 2020.

(d) Currently, there are no available replacement positive pressure air-purifying respirators (PAPRs) that meet the MSHA standard for permissibility.

(e) PAPRs provide a constant flow of filtered air, which offers respiratory protection and comfort in hot working environments.

(f) Operators that were using the Airstream, do not have an approved alternative to provide this type of protection to its miners.

(g) The CleanSpace EX is UL certified to the ANSI/UL 60079–11 standard and can be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions to use in mines with the potential for methane accumulation.

(h) The CleanSpace EX is not MSHA-approved and the manufacturer is not pursuing approval.

(i) The ANSI/UL standards for the approval of these respirators are an accepted alternative to MSHA standards and provide the same level of protection.

(j) The product uses a lithium polymer battery that is not detachable from the electrical circuit. It charges as a complete unit.

(k) The CleanSpace EX allows for more comfort and it can be easily disassembled and cleaned.

(l) The CleanSpace EX has a NIOSH-approved high-capacity high-efficiency particulate air (HEPA)/vapor filter for a half mask and a HEPA particulate filter for the full facemask. The product does not impair vision or communication. The product allows for the miner to simultaneously wear the issued hardhat with a headlamp.

(m) The CleanSpace EX uses technology placing the filter housing and fan assembly above the shoulders to reduce ergonomic restrictions, freeing the miner from having to wear the fan and filter unit around the waist.

(n) There are no hose attachments to the unit, which could create added hazards.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512 and examination results will be recorded weekly and records will be available for examination for one year.

(b) CleanSpace EX units will be charged outby the last open crosscut

and will utilize the manufacturer approved battery charger.

(c) A qualified person under 30 CFR 75.151 will monitor for methane as is required by the standard in the affected areas of the mine.

(d) Employees will be trained on how to properly use and take care of the CleanSpace EX according to manufacturer guidelines.

(e) Qualified miners will receive training regarding the information in the Decision and Order before using the equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

(f) Within 60 days of the Decision and Order becoming finalized, the petitioner will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training. When the training is conducted, the MSHA Certificate of Training (Form 5000–23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

*Docket Number:* M–2021–023–C.

*Petitioner:* Buchanan Minerals, LLC, 1636 Honaker Branch Road, Oakwood, Virginia (Zip 24639).

*Mine:* Buchanan No. 1 Mine, MSHA ID No. 44–04856, located in Buchanan County, Virginia.

*Regulation Affected:* 30 CFR 75.500(d) (Permissible electric equipment).

*Modification Request:* The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection for miners at the Buchanan No. 1 Mine in Virginia. Specifically, the petitioner is applying to use a battery powered respirable protection unit called the CleanSpace EX Powered Respirator (CleanSpace EX) in or inby the last open crosscut.

The petitioner states that:

(a) The petitioner is seeking an alternative to the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection that can provide long-term health benefits.

(b) The 3M Airstream helmet has been used in mines for over 40 years.

(c) 3M has recently faced component disruptions for the Airstream product. 3M globally discontinued the Airstream on June 1, 2020. The ability to order an Airstream system and components

ended in February 2020. Components were available through June 2020.

(d) Currently, there are no available replacement positive pressure air-purifying respirators (PAPRs) that meet the MSHA standard for permissibility.

(e) PAPRs provide a constant flow of filtered air, which offers respiratory protection and comfort in hot working environments.

(f) Operators that were using the Airstream do not have an approved alternative to provide this type of protection to its miners.

(g) The CleanSpace EX is UL certified to the ANSI/UL 60079-11 standard and can be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions to use in mines with the potential for methane accumulation.

(h) The CleanSpace EX is not MSHA-approved and the manufacturer is not pursuing approval.

(i) The ANSI/UL standards for the approval of these respirators are an accepted alternative to MSHA standards and provide the same level of protection.

(j) The product uses a lithium polymer battery that is not detachable from the electrical circuit. It charges as a complete unit.

(k) The CleanSpace EX allows for more comfort and it can be easily disassembled and cleaned.

(l) The CleanSpace EX has a NIOSH-approved high-capacity high-efficiency particulate air (HEPA)/vapor filter for a half mask and a HEPA particulate filter for the full facemask. The product does not impair vision or communication. The product allows for the miner to simultaneously wear the issued hardhat with a headlamp.

(m) The CleanSpace EX uses technology placing the filter housing and fan assembly above the shoulders to reduce ergonomic restrictions, freeing the miner from having to wear the fan and filter unit around the waist.

(n) There are no hose attachments to the unit, which could create added hazards.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512 and examination results will be recorded weekly and records will be available for examination for one year.

(b) CleanSpace EX units will be charged outby the last open crosscut and will utilize the manufacturer approved battery charger.

(c) A qualified person under 30 CFR 75.151 will monitor for methane as is

required by the standard in the affected areas of the mine.

(d) Employees will be trained on how to properly use and take care of the CleanSpace EX according to manufacturer guidelines.

(e) Qualified miners will receive training regarding the information in the Decision and Order before using the equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

(f) Within 60 days of the Decision and Order becoming finalized, the petitioner will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training. When the training is conducted, the MSHA Certificate of Training (Form 5000-23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

*Docket Number:* M-2021-024-C.

*Petitioner:* Buchanan Minerals, LLC, 1636 Honaker Branch Road, Oakwood, Virginia (Zip 24639).

*Mine:* Buchanan No. 1 Mine, MSHA ID No. 44-04856, located in Buchanan County, Virginia.

*Regulation Affected:* 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

*Modification Request:* The petitioner requests a modification of the existing standard, 30 CFR 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection for miners at the Buchanan No. 1 Mine in Virginia. Specifically, the petitioner is applying to use a battery powered respirable protection unit called the CleanSpace EX Powered Respirator (CleanSpace EX) within 150 feet of pillar workings and longwall faces.

The petitioner states that:

(a) The petitioner is seeking an alternative to the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection that can provide long-term health benefits.

(b) The 3M Airstream helmet has been used in mines for over 40 years.

(c) 3M has recently faced component disruptions for the Airstream product. 3M globally discontinued the Airstream on June 1, 2020. The ability to order an Airstream system and components

ended in February 2020. Components were available through June 2020.

(d) Currently, there are no available replacement positive pressure air-purifying respirators (PAPRs) that meet the MSHA standard for permissibility.

(e) PAPRs provide a constant flow of filtered air, which offers respiratory protection and comfort in hot working environments.

(f) Operators that were using the Airstream, do not have an approved alternative to provide this type of protection to its miners.

(g) The CleanSpace EX is UL certified to the ANSI/UL 60079-11 standard and can be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions to use in mines with the potential for methane accumulation.

(h) The CleanSpace EX is not MSHA approved and the manufacturer is not pursuing approval.

(i) The ANSI/UL standards for the approval of these respirators are an accepted alternative to MSHA standards and provide the same level of protection.

(j) The product uses a lithium polymer battery that is not detachable from the electrical circuit. It charges as a complete unit.

(k) The CleanSpace EX allows for more comfort and it can be easily disassembled and cleaned.

(l) The CleanSpace EX has a NIOSH-approved high-capacity high-efficiency particulate air (HEPA)/vapor filter for a half mask and a HEPA particulate filter for the full facemask. The product does not impair vision or communication. The product allows for the miner to simultaneously wear the issued hardhat with a headlamp.

(m) The CleanSpace EX uses technology placing the filter housing and fan assembly above the shoulders to reduce ergonomic restrictions, freeing the miner from having to wear the fan and filter unit around the waist.

(n) There are no hose attachments to the unit, which could create added hazards.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512 and examination results will be recorded weekly and records will be available for examination for one year.

(b) CleanSpace EX units will be charged outby the last open crosscut and will utilize the manufacturer approved battery charger.

(c) A qualified person under 30 CFR 75.151 will monitor for methane as is

required by the standard in the affected areas of the mine.

(d) Employees will be trained on how to properly use and take care of the CleanSpace EX according to manufacturer guidelines.

(e) Qualified miners will receive training regarding the information in the Decision and Order before using the equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

(f) Within 60 days of the Decision and Order becoming finalized, the petitioner will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training. When the training is conducted, the MSHA Certificate of Training (Form 5000–23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

**Jessica D. Senk,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 2021–12161 Filed 6–9–21; 8:45 am]

**BILLING CODE 4520–43–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[OMB Control No. 1219–0103]

#### Proposed Extension of Information Collection; Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: Requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be

properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres.

**DATES:** All comments must be received on or before August 9, 2021.

**ADDRESSES:** You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

*Electronic Submissions:* Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for docket number MSHA–2021–0009. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.

- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

*Written/Paper Submissions:* Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.

- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Jessica Senk, Director, Office of Standards, Regulations, and Variances, MSHA, at [MSHA.information.collections@dol.gov](mailto:MSHA.information.collections@dol.gov) (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and

revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

Methane is a flammable gas found in underground mines in the United States. Although methane is often associated with underground coal mines, it also occurs in some metal and nonmetal mines. Underground metal and Nonmetal mines are categorized according to the potential to liberate methane (30 CFR 57.22003—Mine category or subcategory). Methane is a colorless, odorless, tasteless gas, and it tends to rise to the roof of a mine because it is lighter than air. Although methane itself is nontoxic, its presence reduces the oxygen content by dilution when mixed with air and, consequently, can act as an asphyxiant when present in large quantities.

Methane may enter the mining environment from a variety of sources including fractures, faults, or shear zones overlying or underlying the strata that surround the ore body, or from the ore body itself. It may occur as an occluded gas within the ore body. Methane mixed with air is explosive in the range of 5 to 15 percent, provided that 12 percent or more oxygen is present. The presence of dust containing volatile matter in the mine atmosphere may further enhance the potential for methane to explode in a mine. Section 103(i) of Mine Act requires additional inspections be conducted at mines depending on the amount of methane liberated from a mine.

Title 30 CFR 57.22004(c) requires operators of underground metal and nonmetal mines to notify MSHA as soon as possible if any of the following events occur: (a) There is an outburst that results in 0.25 percent or more methane in the mine atmosphere, (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere, (c) there is an ignition of methane, or (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a I–B, I–C, II–B, V–B, or Category VI mine. Under sections 57.22239 and 57.22231, if methane reaches 2.0 percent in a Category IV mine or if methane reaches 0.25 percent in the mine atmosphere of a Subcategory I–B, II–B, V–B, or VI mine, MSHA shall be notified immediately. Although the standards do not specify how MSHA is to be notified, MSHA anticipates that the notifications would be made by telephone.

Sections 57.22229 and 57.22230 require that the mine atmosphere be tested for methane and/or carbon dioxide at least once every 7 days by a competent person or atmospheric

monitoring system, or a combination of both. Section 57.2229 applies to underground metal and nonmetal mines categorized as I–A, III, and V–A mines where the atmosphere is tested for both methane and carbon dioxide. Section 57.22230 applies to underground metal and nonmetal mines categorized as II–A mines where the atmosphere is tested for methane. Where examinations disclose hazardous conditions, affected miners must be informed. Sections 57.22229(d) and 57.22230(c) require that the person performing the tests certify by signature and date that the tests have been conducted. Certifications of examinations shall be kept for at least 1 year and made available to authorized representatives of the Secretary.

## II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Background documents related to this information collection request are available at <https://regulations.gov> and in DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

## III. Current Actions

This information collection request concerns provisions for Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information

collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0103.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 6.

*Frequency:* On occasion.

*Number of Responses:* 319.

*Annual Burden Hours:* 27 hours.

*Annual Respondent or Recordkeeper Cost:* \$0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

**Jessica Senk,**

*Certifying Officer.*

[FR Doc. 2021–12159 Filed 6–9–21; 8:45 am]

**BILLING CODE 4510–43–P**

## MILLENNIUM CHALLENGE CORPORATION

[MCC FR 21–05]

### Notice of First Amendment to Compact With the Republic of Ghana

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Millennium Challenge Act of 2003, as amended, the Millennium Challenge Corporation is publishing a summary, justification, and full text of the proposed First Amendment to Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Republic of Ghana. Representatives of the United States Government and the Government of Ghana plan to conclude the Amendment in June 2021.

(Authority: 22 U.S.C. 7708 (i) (2))

Dated: June 4, 2021.

**Thomas G. Hohenthaner,**

*Acting VP/General Counsel and Corporate Secretary.*

### Summary of First Amendment to Millennium Challenge Compact With the Republic of Ghana

The Board of Directors of the Millennium Challenge Corporation (“MCC”) has approved an amendment

(the “*Amendment*”) to the existing US\$308.2 million, five-year Millennium Challenge Compact between the United States of America, acting through MCC, and the Republic of Ghana (the “*Compact*”).

## Background

The Compact was signed August 5, 2014 and entered into force on September 6, 2016. The Compact aims to improve Ghana's power sector through investments that provide more reliable and affordable electricity to Ghana's businesses and households. Compact projects focus on improving the infrastructure in the country's southern electricity distribution network, advancing energy efficiency programs, increasing power reliability and access to key markets, and strengthening Ghana's electricity sector regulatory institutions. The investment strategy is based on an integrated loss management approach to reduce technical and commercial losses in the distribution system, reduce distribution system vulnerability, and reduce the frequency and duration of power outages.

## Scope of the Amendment

MCC proposes to extend the term of the Compact for an additional nine-months to June 6, 2022 and to provide additional funding up to \$7,651,395. The term extension is necessary to mitigate implementation delays due to the COVID–19 pandemic and to complete infrastructure projects as originally contemplated. The proposed additional funding will be used to cover additional program administration and related oversight costs associated with extending the Compact's term.

## Justification for the Amendment

In late January 2020, MCC received the first reports from Ghana of COVID–19-related manufacturing delays from equipment suppliers. On March 12, 2020, the Government of Ghana confirmed its first two cases of COVID–19 and later announced measures to prevent and control the virus' spread. These included mandated social distancing, restrictions on foreign national entry to the country, border closures, and partial lockdowns across major cities, including the capital city of Accra, the location of major compact project sites. The impact of these measures was immediate and seriously affected the implementation timeline of compact activities.

Measures to mitigate the spread of COVID–19 led to global supply chain disruptions and restrictions on the movement of technical experts, project

management staff, consultants, and contractors locally and internationally, thereby slowing procurements, the delivery of equipment and materials, factory testing and acceptance of key components, installation of equipment at project sites, and physical activity on project sites. In addition, temporary shutdowns of work sites, temporary government office closures, changes in priorities by government implementing entities, and COVID-19 infections among government staff and the consultants and contractors working on the projects have disrupted compact implementation.

Extending the compact term will enable MCC and the Government of Ghana to complete and hand over all ongoing projects to the beneficiary institutions at the required quality, without compromising health, safety, and environmental standards, and will reduce sustainability risks through the necessary attention to testing, commissioning, training of utility operators and technicians, and additional oversight during the commencement of the defects notification periods associated with these projects. As COVID-19 has disrupted program activities and timelines, an extended compact term will maximize long-term results, benefits for the citizens of Ghana, and MCC's return on investment, and benefit the compact program as a whole. The additional MCC funding is necessary for and will be used to support oversight and other administrative functions during the additional nine months of the compact term.

#### **First Amendment to Millennium Challenge Compact Between the United States of America, Acting Through the Millennium Challenge Corporation and the Republic of Ghana**

##### **First Amendment to Millennium Challenge Compact**

This First Amendment to Millennium Challenge Compact (this "*Amendment*"), is made by and between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation ("*MCC*"), and the Republic of Ghana, acting through its government (the "*Government*") (each referred to herein individually as a "*Party*" and collectively, as the "*Parties*"). All capitalized terms used in this Amendment that are not otherwise defined herein have the meanings given to such terms in the Compact (as defined below).

#### *Recitals*

*Whereas*, the Parties signed that certain Millennium Challenge Compact by and between the United States of America, acting through MCC, and the Republic of Ghana, on August 5, 2014 (as modified, the "*Compact*");

*Whereas*, Section 7.4 of the Compact provides for a Compact Term of five (5) years after its entry into force;

*Whereas*, the Compact entered into force on September 6, 2016;

*Whereas*, implementation of the compact program has been adversely affected and delayed by the coronavirus pandemic;

*Whereas*, the Parties now desire to extend the Compact Term by an additional nine (9) months (the "*Extension*"), and to increase assistance under the Compact for related administrative and oversight costs, to allow the Government more time to implement and complete the Projects in order to fully achieve the Compact Goal, Project Objectives and Program Objectives; and

*Whereas*, pursuant to Section 6.2(a) of the Compact, the Parties desire to amend the Compact as more fully described herein to memorialize the Extension.

*Now, therefore*, the Parties hereby agree as follows:

#### **Amendments**

##### **1. Amendment to Section 2.1.**

Section 2.1 (Program Funding) of the Compact is amended and restated to read as follows:

"Section 2.1 *Program Funding*. Upon entry into force of this Compact in accordance with Section 7.3, MCC will grant to the Government, under the terms of this Compact, an amount not to exceed Three Hundred One Million, Nine Hundred Seventy-Four Thousand, Forty-Six United States Dollars (US\$301,974,046) ("*Program Funding*") for use by the Government to implement the Program. The allocation of Program Funding is generally described in *Annex II*."

##### **2. Amendment to Section 2.2.**

Section 2.2(a) (Compact Implementation Funding) of the Compact is amended and restated to read as follows:

"(a) Upon the signing of this Compact, MCC will grant to the Government, under the terms of this Compact and in addition to the Program Funding described in Section 2.1, an amount not to exceed Thirteen Million Eight Hundred Seventy-Seven Thousand, Three Hundred Forty-Nine United States Dollars (US\$13,877,349) ("*Compact Implementation Funding*")

under Section 609(g) of the Millennium Challenge Act of 2003, as amended (the "*MCA Act*"), for use by the Government to facilitate implementation of this Compact, including for the following purposes:

(i) Financial management and procurement activities;

(ii) administrative activities (including start-up costs such as staff salaries) and administrative support expenses such as rent, computers and other information technology or capital equipment;

(iii) monitoring and evaluation activities;

(iv) feasibility, design and other project preparatory studies; and

(v) other activities to facilitate Compact implementation as approved by MCC.

The allocation of Compact Implementation Funding is generally described in Annex II."

##### **3. Amendment to Section 7.4.**

Section 7.4 (Compact Term) of the Compact is amended and restated to read as follows:

"Section 7.4 *Compact Term*. This Compact will remain in force for five (5) years and nine (9) months after its entry into force, unless terminated earlier under Section 5.1 (the "*Compact Term*")."

##### **4. Amendments to Annex II (Multi-Year Financial Plan Summary).**

(a) Section 2 of Annex II (Multi-Year Financial Plan Summary) to the Compact is amended and restated to read as follows:

"2. *Government Contribution*. During the Compact Term, the Government will make contributions, relative to its national budget and taking into account prevailing economic conditions, as are necessary to carry out the Government's responsibilities under Section 2.6(a) of this Compact. These contributions may include in-kind and financial contributions (including obligations of Ghana on any debt incurred toward meeting these contribution obligations). In connection with this obligation the Government has developed a budget over the Compact Term to complement MCC Funding through budget allocations to the Projects. The Government initially anticipates making contributions of approximately Twenty-Three Million, Six Hundred Eighty-Eight Thousand, Eight Hundred Fifty-Five United States Dollars (US\$23,688,855 (or 7.5 percent of the amount of MCC Funding provided under this Compact) over the Compact Term. Such contribution shall be in addition to the Government's spending allocated toward the Project Objectives in its budget for the year immediately

preceding the establishment of this Compact. The Government’s contribution shall be subject to any legal requirements in Ghana for the budgeting and appropriation of such contribution, including approval of the Government’s annual budget by its legislature. The Parties may set forth in the Program Implementation Agreement or other appropriate Supplemental Agreements certain requirements regarding this Government Contribution, which requirements may be conditions precedent to the Disbursement of MCC Funding. During implementation of the Program, the Government’s contributions may be modified or new contributions added with MCC approval, provided that the modified or new contributions continue to advance the Project Objectives.”

(b) Exhibit A to Annex II (Multi-Year Financial Plan Summary) to the Compact is deleted in its entirety and

replaced by revised Exhibit A set forth in *Annex I* to this Amendment.

**General Provisions**

1. Further Assurances.

Each Party hereby covenants and agrees, without necessity of any further consideration, to execute and deliver any and all such further documents and take any and all such other action as may be reasonably necessary or appropriate to carry out the intent and purpose of this Amendment.

2. Effect of this Amendment.

From and after the date this Amendment enters into force, the Compact and this Amendment shall be read together and construed as one document, and each reference in the Compact to the “Compact,” “hereunder,” “hereof” or words of like import referring to the Compact, and each reference to the “Compact,” “thereunder,” “thereof” or words of like

import in any Supplemental Agreement or in any other document or instrument delivered pursuant to the Compact or any Supplemental Agreement, shall mean and be construed as a reference to the Compact, as amended by this Amendment.

3. Limitations.

Except as expressly amended by this Amendment, all of the provisions of the Compact remain unchanged and in full force and effect.

4. Governing Law.

The Parties acknowledge and agree that this Amendment is an international agreement entered into for the purpose of amending the Compact and as such will be interpreted in a manner consistent with the Compact and is governed by international law.

**Annex I: Revised Exhibit A to Annex II to the Compact Multi-Year Financial Plan Summary**

Compact program tranche I	Current approved MYFP	Proposed additional MCC grant funds	Revised MYFP
1. ECG Financial & Operational Turnaround Project-Tranche 1			
1.1 Private Sector Participation	6,162,736		6,162,736
1.2 Modernizing ECG Operations	31,186,058	3,076,668	34,262,726
1.3 Commercial Loss Reduction	17,236,519		17,236,519
1.4 Technical Loss Reduction	155,326,548	318,978	155,645,527
1.5 Outage Reduction	354,406		354,406
Subtotal	210,266,267	3,395,646	213,661,914
2. NEDCo Financial & Operational Turnaround Project			
2.1 Private Sector Participation	0		0
2.2 Modernizing NEDCo Operations	1,175,475		1,175,475
2.3 Commercial Loss Reduction	0		0
2.4 Technical Loss Reduction	0		0
2.5 Outage Reduction	0		0
2.6 Tamale Service Area Improvement	0		0
2.7 Commercial Development	0		0
Subtotal	1,175,475		1,175,475
3. Regulatory Strengthening and Capacity Building Project			
3.1 Sector Performance Monitoring Ca	797,672		797,672
3.2 Tariff Review & Regulation	2,057,115		2,057,115
Subtotal	2,854,787		2,854,787
4. Access Project			
4.1 Improve Electricity Supply to MS	78,070		78,070
4.2 Improve Service Delivery/Strength	821,930		821,930
Subtotal	900,000		900,000
5. Power Sector Generation Improvement Project			
5.1 Operationalize “Gas to Power” Plan	0		0
5.2 Facilitate LNG development	0		0
5.3 Strengthen IPP framework	0		0
Subtotal	0		0
6. Energy Efficiency & Demand Side Management Project			
6.1 Development and Enforcement of Standards	4,268,865		4,268,865
6.2 Improve Energy Auditing	3,900,000		3,900,000
6.3 Education and Public Information	1,755,000		1,755,000
6.4 Demand Side Management Infrastructure	12,373,934		12,373,934



Compact program tranche I	Current approved MYFP	Proposed additional MCC grant funds	Revised MYFP
Subtotal .....	22,297,799	.....	22,297,799
7. Monitoring and Evaluation (M&E) .....	.....	.....	.....
7.1. Monitoring and Evaluation (M&E) .....	7,308,437	.....	7,308,437
Subtotal .....	7,308,437	.....	7,308,437
8. Program Administration and Oversight .....	.....	.....	.....
8.1 MiDA Administration .....	32,373,374	2,898,597	35,271,971
8.2 Fiscal & Procurement Agents .....	9,763,852	1,345,902	11,109,754
8.3 Audit & Compliance .....	749,850	11,250	761,100
Subtotal .....	42,887,076	4,255,749	47,142,825
9. ECG Financial and Operational Turnaround Project-Tranche 2 .....	.....	.....	.....
9.1 Private Sector Participation .....	0	.....	0
9.2 Modernizing ECG Operations .....	2,120,755	.....	2,120,755
9.3 Commercial Loss Reduction .....	0	.....	0
9.4 Technical Loss Reduction .....	4,512,055	.....	4,512,055
9.5 Outage Reduction .....	0	.....	0
Subtotal .....	6,632,810	.....	6,632,810
TOTAL Program Funding .....	294,322,651	7,651,395	301,974,046
TOTAL Compact Implementation Funding .....	13,877,349	.....	13,877,349
TOTAL MCC Funding .....	308,200,000	7,651,395	315,851,395
Total Government Contributions .....	23,115,000	573,855	23,688,855
TOTAL COMPACT + GOVERNMENT CONTRIBUTION .....	331,315,000	8,225,250	339,540,250

[FR Doc. 2021-12124 Filed 6-9-21; 8:45 am]

BILLING CODE 9211-03-P

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50-456 and 50-457; NRC-2021-0119]

**Exelon Generation Company, LLC; Braidwood Station, Units 1 and 2**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License Nos. NPF-72 and NPF-77, issued to Exelon Generation Company, LLC, for operation of the Braidwood Station, Units 1 and 2. The proposed amendment is contained in the licensee’s letter dated May 27, 2021, and would change Technical Specification (TS) Surveillance Requirement (SR) 3.7.9.2 to allow an ultimate heat sink (UHS) temperature of less than or equal to 102.8 degrees Fahrenheit (°F) through September 30, 2021.

**DATES:** Submit comments by July 12, 2021. Request for a hearing or petitions

for leave to intervene must be filed by August 9, 2021.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0119. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Joel S. Wiebe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-6606, email: [Joel.Wiebe@nrc.gov](mailto:Joel.Wiebe@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments**

*A. Obtaining Information*

Please refer to Docket ID NRC-2021-0119 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0119.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (EST),

Monday through Friday, except Federal holidays.

### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2021-0119 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating License Nos. NPF-72 and NPF-77, issued to Exelon Generation Company, LLC, for operation of the Braidwood Station, Units 1 and 2, located in Will County, Illinois.

The proposed amendments would change TS SR 3.7.9.2 to allow a UHS temperature of less than or equal to 102.8 °F through September 30, 2021.

Before any issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration (NSHC). Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR

50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The likelihood of a malfunction of any systems, structures, or components (SSCs) supported by the Ultimate Heat Sink (UHS) is not significantly increased by increasing the allowable UHS temperature from ≤102 °F to ≤102.8 °F. The UHS provides a heat sink for process and operating heat from safety related components during a transient or accident, as well as during normal operation. The proposed change does not make any physical changes to any plant SSCs, nor does it alter any of the assumptions or conditions upon which the UHS is designed. The UHS is not an initiator of any analyzed accident. All equipment supported by the UHS has been evaluated to demonstrate that their performance and operation remains as described in the Updated Final Safety Analysis Report (UFSAR) with no increase in probability of failure or malfunction.

The SSCs credited to mitigate the consequences of postulated design basis accidents remain capable of performing their design basis function. The change in maximum UHS temperature has been evaluated using the UFSAR described methods to demonstrate that the UHS remains capable of removing normal operating and post-accident heat. The change in UHS temperature and resulting containment response following a postulated design basis accident has been demonstrated to not be impacted. Additionally, all the UHS supported equipment, credited in the accident analysis to mitigate an accident, has been shown to continue to perform their design function as described in the UFSAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not introduce any new modes of plant operation, change the design function of any SSC, or change the mode of operation of any SSC. There are no new equipment failure modes or malfunctions created as affected SSCs continue to operate in the same manner as previously evaluated and have been evaluated to perform as designed at the increased UHS temperature and as assumed in the accident analysis. Additionally, accident initiators remain as described in the UFSAR and no new accident initiators are postulated as a result of the increase in UHS temperature.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change continues to ensure that the maximum temperature of the cooling water supplied to the plant SSCs during a UHS design basis event remains within the evaluated equipment limits and capabilities assumed in the accident analysis. The proposed change does not result in any changes to plant equipment function, including setpoints and actuations. All equipment will function as designed in the plant safety analysis without any physical modifications. The proposed change does not alter a limiting condition for operation, limiting safety system setting, or safety limit specified in the Technical Specifications.

The proposed change does not adversely impact the UHS inventory required to be available for the UFSAR described design basis accident involving the worst case 30-day period including losses for evaporation and seepage to support safe shutdown and cooldown of both Braidwood Station units. Additionally, the structural integrity of the UHS is not impacted and remains acceptable following the change, thereby ensuring that the assumptions for both UHS temperature and inventory remain valid.

Therefore, since there is no adverse impact of this proposed change on the Braidwood Station safety analysis, there is no reduction in the margin of safety of the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves NSHC.

The NRC is seeking public comments on this proposed determination that the license amendment request involves NSHC. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 60-day notice period. However, if circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the notice period, provided that its final determination is that the amendment involves NSHC. The final determination will consider all public and State comments received. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

### III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS

Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and on the NRC website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

### IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the

NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly

available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated May 27, 2021 (ADAMS Accession No. ML21147A543).

*Attorney for licensee:* Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* Nancy L. Salgado.

Dated: June 7, 2021.

For the Nuclear Regulatory Commission.

**Joel S. Wiebe,**

*Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2021-12165 Filed 6-9-21; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL REGULATORY COMMISSION

[Docket No. N2021-1; Presiding Officer's Ruling No. 16]

### Service Standard Changes

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is providing notice of a hearing on the Postal Service's direct case in this proceeding. This notice informs the public of the hearing dates and times.

**DATES:** *Hearing date:* June 9, 2021, at 10:00 a.m. Eastern Daylight Time, Virtual Online.

**ADDRESSES:** For additional information, Presiding Officer's Ruling No. 16 can be accessed electronically through the Commission's website at <https://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:** The Presiding Officer hereby gives notice that a hearing on the Postal Service's direct case in the above-captioned docket shall commence at 10:00 a.m. EDT on Wednesday, June 9, 2021. The

hearing shall be available by livestream at <https://youtu.be/RZl6CzkutRg>.<sup>1</sup>

Each individual seeking to actively participate in the WebEx hearing (including motions practice or may conduct cross-examination or follow-up cross-examination) must register by sending an email to [N2021-1registration@prc.gov](mailto:N2021-1registration@prc.gov) with the subject line "Registration" not later than Tuesday, June 8, 2021. Please ensure the email contains the following information:

- Your first and last name
- your email address (to receive the WebEx link)
- your affiliation

The [N2021-1registration@prc.gov](mailto:N2021-1registration@prc.gov) email address is used solely for the exchange of information relating to the logistics of registering for and participating in the hearing.<sup>2</sup> No information related to the substance of the cases shall be provided or communicated via that email.

The Postal Service's witnesses shall appear on June 9, 2021, at 10:00 a.m. EDT via the WebEx hearing. The order of the witnesses is as follows:

- Steven Monteith (USPS-T-4)
- Stephen Hagenstein (USPS-T-3)
- Robert Cintron (USPS-T-1)

It is the Presiding Officer's intent to have all the Postal Service witnesses called and excused by 4:00 p.m. EDT. Should additional time for questioning be necessary, the hearing will reconvene on June 10, 2021, at 10:00 a.m. EDT.

Three of the Postal Service's witnesses, namely Curtis Whiteman (USPS-T-2), Thomas Thress (USPS-T-5), and Sharon Owens (Postal Service institutional witness) are not called and are excused. The Postal Service shall file any corrected testimony, corrected designated written-cross examination, etc., applicable to the excused witnesses with a declaration/affidavit from the witness attesting to the proposed record material, no later than June 7, 2021. The Postal Service may move to admit these materials by written motion not later than June 9, 2021. Objections to the admission of the proposed record material for these excused witnesses are due not later than June 10, 2021.

Likewise the rebuttal witnesses, namely Anita Morrison (APWU-RT-1), Stephen DeMatteo (APWU-RT-2), Douglas Carlson (DFC-RT-1), and Steve Hutkins (SH-RT-1) are not called and are excused. Rebuttal witnesses shall file a motion, in writing, to admit their

<sup>1</sup> Should a second day of hearings be necessary, it will convene at 10:00 a.m. EDT on Thursday, June 10, 2021, and will be available to livestream at <https://youtu.be/n9cQTSKoE7E>.

<sup>2</sup> Please refer to the Commission's privacy policy which is available at <https://www.prc.gov/privacy>.

testimony, along with a declaration that their testimony would be the same if offered orally (and proffer any corrections if necessary), not later than June 10, 2021. Objections to the admission of the proposed record material for these excused rebuttal witnesses are due not later than June 11, 2021.

### Ruling

1. The hearing on the Postal Service's direct case shall begin on June 9, 2021, at 10:00 a.m. EDT. The Postal Service shall make the identified witnesses available at the commencement of the hearing, consistent with the body of this ruling.

2. Participants who wish to actively participate must register via email consistent with the body of this ruling.

3. Proposed record materials from the excused Postal Service witnesses shall be filed with the Commission not later than June 7, 2021.

4. The Postal Service shall move to admit the proposed record materials for excused witnesses not later than June 9, 2021, consistent with the body of this ruling.

5. Objections to the admission of the Postal Service's proposed record materials are due not later than June 10, 2021.

6. Excused rebuttal witnesses shall move to have their testimony (or corrected testimony) admitted by June 10, 2021, consistent with the body of this ruling.

7. Objections to the admission of the rebuttal witnesses' proposed record materials are due not later than June 11, 2021.

8. The Secretary shall arrange for publication of this ruling in the **Federal Register**.

**Erica A. Barker,**  
*Secretary.*

[FR Doc. 2021-12186 Filed 6-9-21; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021-98 and CP2021-101]

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* June 14, 2021.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Introduction
- II. Docketed Proceeding(s)

**I. Introduction**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<sup>1</sup>

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable

statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

**II. Docketed Proceeding(s)**

1. Docket No(s): MC2021-98 and CP2021-101; Filing Title: USPS Request to Add Priority Mail Contract 705 to Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: June 4, 2021; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative: Kenneth R. Moeller; Comments Due: June 14, 2021.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2021-12151 Filed 6-9-21; 8:45 am]

**BILLING CODE 7710-FW-P**

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**POSTAL SERVICE**

**Board of Governors; Sunshine Act Meeting**

**DATES AND TIMES:** Wednesday, June 16, 2021, at 9:00 a.m.

**PLACE:** Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW, in the Benjamin Franklin Room.

**STATUS:** Wednesday, June 16, 2021, at 9:00 a.m.

**MATTERS TO BE CONSIDERED:**

**Wednesday, June 16, 2021, at 9:00 a.m. (Closed)**

1. Strategic Issues.
2. Financial and Operational Matters.
3. Compensation and Personnel Matters.
4. Administrative Items.

**CONTACT PERSON FOR MORE INFORMATION:** Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260-1000. Telephone: (202) 268-4800.

**Katherine Sigler,**

*Assistant Secretary.*

[FR Doc. 2021-12281 Filed 6-8-21; 11:15 am]

**BILLING CODE 7710-12-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-92107; File No. SR-Phlx-2021-32]

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Phlx Rules**

June 4, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 24, 2021, Nasdaq PHLX LLC ("Phlx" or "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 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 Phlx Rules at Options 1, Section 1, Applicability, Definitions and References; Options 2, Section 4, Obligations of Market Makers; Options 2, Section 12, Registration and Functions of Options Lead Market Makers; Options 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 15, Simple Order Risk Protections; and Options 3, Section 16, Complex Order Risk Protections. The Exchange also proposes to add a new Equity 3A, which will be reserved, to the Rulebook Shell.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/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

<sup>1</sup> See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Phlx Rules at Options 1, Section 1, Applicability, Definitions and References; Options 2, Section 4, Obligations of Market Makers; Options 2, Section 12, Registration and Functions of Options Lead Market Makers; Options 3, Section 7, Types of Orders and Order and Quote Protocols; Options 3, Section 15, Simple Order Risk Protections; and Options 3, Section 16, Complex Order Risk Protections. The Exchange also proposes to add and reserve a new Equity 3A to the Rulebook Shell. Each change is described below.

Options 2, Section 4

The Exchange proposes to amend Options 2, Section 4, Obligations of Market Makers. First, the Exchange proposes some technical amendments. The Exchange proposes to amend Options 2, Section 4(b) and 4(b)(1) to change the term "an" to "a". The Exchange also proposes to capitalize the term "market maker" within Options 2, Section 4(b)(4). Finally, the Exchange proposes to amend the term "is" to "are" within Options 2, Section 4(c). These corrections are non-substantive and intended to make the rule text clearer.

Second, the Exchange proposes to amend the current rule text within Options 2, Section 4(b)(5) which states,

An RSQT electing to engage in Exchange options transactions is designated as a Lead Market Maker on the Exchange for all purposes under the Exchange Act and the rules and regulations thereunder with respect to options transactions initiated and effected by him in his capacity as a Market Maker.

The Exchange proposes to amend the rule to replace the term "RSQT" with the broader term "Market Maker" and replace the term "Lead Market Maker" with the term "specialist." Phlx filed a rule change<sup>3</sup> to amend certain rules, the rule text previously at Commentary .01 of Rule 1014, which is now located at Options 2, Section 4(b)(5) stated,

An ROT electing to engage in Exchange Options transactions is

designated as a specialist on the Exchange for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder with respect to options transactions initiated and effected by him on the floor in his capacity as an ROT. For purposes of this commentary, the term "transactions initiated and effected on the floor" shall not include transactions initiated by an ROT off the floor, but which are considered "on-floor" pursuant to Commentaries .07 and .08 of Rule 1014. Similarly, an RSQT electing to engage in Exchange Options transactions is designated as a specialist on the Exchange for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder with respect to options transactions initiated and effected by him in his capacity as an ROT.

At this time, the Exchange proposes to revert the rule text back to a part of original language and state, "A Market Maker electing to engage in Exchange Options transactions is designated as a specialist on the Exchange for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder with respect to options transactions initiated and effected by him on the floor in his capacity as a Market Maker." Pursuant to Options 1, Section 1(b)(28), the term "Market Maker" means a Streaming Quote Trader ("SQT") or a Remote Streaming Quote Trader ("RSQT") who enters quotations for his own account electronically into the System. An RSQT is only one type of Market Maker, the other is an SQT. In 2020, the Exchange amended the term "ROT" to "Market Maker."<sup>4</sup> The original term "ROT" included both SQTs and RSQTs and therefore the broader term "Market Maker" should replace "RSQT." While the Rulebook Relocation amended the term "specialist" to "Lead Market Maker," the Exchange notes that the term "specialist" within prior Rule 1014, which is now Options 2, Section 4(b)(5), did not refer to a Phlx participant also known as a "specialist," rather the term referred to an individual that engages in market making pursuant to the Act. The Exchange proposes to replace the term "Lead Market Maker" with the term "specialist" which shall mean, for purposes of this rule, an individual that engages in market making. The term "specialist" is broader than the term "Lead Market Maker."

This proposal reverts back to language previously used and should capture the universe of market makers the rule was originally intended to capture.

Options 3, Section 15 and Options 3, Section 16

The Exchange proposes to add provisions within Options 3, Section 15 at paragraph (b)(2), related to Simple Order Risk Protections, and Options 3, Section 16 at paragraph (e), related to Complex Order Risk Protections, to describe a current limitation that exists within its rules today as to the number of contracts an incoming order or quote may specify. Specifically, for simple orders, the maximum number of contracts, which shall not be less than 10,000 contracts, is established by the Exchange from time-to-time. For Complex Orders, the maximum number of contracts (or shares), which shall not be less than 10,000 contracts (or 100,000 shares), is established by the Exchange from time-to-time. Orders or quotes that exceed the maximum number of contracts/shares are rejected. This System limitation is the same on all Nasdaq affiliated exchanges.<sup>5</sup> Today, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") describe this limitation within their rules at Options 3, Section 15(a)(2)(B). ISE and MRX also describe the Size Limitation within Options 3, Section 16(c)(2). Phlx proposes to similarly describe this limitation in its rules.

Options 3, Section 7

The Exchange also proposes to amend Options 3, Section 7(c)(2), Types of Orders and Order and Quote Protocols, which describes Immediate-or-Cancel Orders or "IOC" Orders. Today, the Exchange describes an IOC order as a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled.<sup>6</sup> Options 3, Section 7(c)(2)(B) provides that IOC orders may be entered

<sup>5</sup> The Exchange recently filed to add Size Limitation to BX and The Nasdaq Stock Market LLC. See Securities Exchange Act Release Nos. 91838 (May 11, 2021), 86 FR 26750 (May 17, 2021) (SR-BX-2021-020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Rules at Options 3, Section 7, Types of Orders and Order and Quote Protocols, and Options 3, Section 15, Risk Protections); and 91841 (May 11, 2021), 86 FR 26753 (May 17, 2021) (SR-NASDAQ-2021-030) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Nasdaq Options Market LLC Rules at Options 3, Section 7, Types of Orders and Order and Quote Protocols, and Options 3, Section 15, Risk Protections).

<sup>6</sup> See Options 3, Section 7(c)(2). The Exchange also notes that IOC orders entered with a TIF of IOC are not eligible for routing.

<sup>3</sup> See Securities Exchange Act Release No. 51126 (February 9, 2005), 70 FR 6915 (February 9, 2005) (SR-Phlx-2004-90) (Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Remote Streaming Quote Traders).

<sup>4</sup> See Securities Exchange Act 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR-Phlx-2020-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell) ("Rulebook Relocation").

through FIX<sup>7</sup> or SQF,<sup>8</sup> provided that an IOC order entered by a Market Maker<sup>9</sup> through SQF is not subject to the Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2), respectively. With the proposed addition of the Size Limitation to proposed new Options 3, Section 15(b)(2) and Options 3, Section 16(e), the Exchange also proposes to note that Size Limitation does not apply to IOC orders entered through SQF.

Today, orders that are entered as IOC by a Market Maker through SQF are subject to the protections in Options 3, Section 15, except for Order Price Protection and Market Order Spread Protection. The Exchange proposes to add Size Limitation to the list of protections that are available for IOC orders entered through FIX, but not SQF. In addition, the Exchange proposes to note within Options 3, Section 7(c)(2), that, “IOC orders may be entered through FIX or SQF, provided that an IOC order entered by a Market Maker through SQF is not subject to the Order Price Protection, the Market Order Spread Protection, or the Size Limitation in Options 3, Section 15(a)(1), (a)(2) and (b)(2), respectively, or Size Limitation within Options 3, Section 16(e).” The addition of this rule text will bring greater clarity to the order type.

The Exchange notes that while only orders are entered into FIX, SQF is a quote protocol that also permits Market Makers to enter IOC orders that do not rest on the order book. The Exchange has not elected to utilize Size Limitation on SQF as it did for FIX because Market

Makers only utilize SQF to enter IOC orders and Market Makers are professional traders with their own risk settings. FIX, on the other hand, is utilized by all market participants who may not have their own risk settings, unlike Market Makers.

Market Makers utilize IOC orders to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these IOC orders to offload risk, is vital for Market Makers, and allows them to maintain tight markets and meet their quoting and other obligations to the market. Market Makers handle a large amount of risk when quoting and in addition to the risk protections required by the Exchange. Market Makers utilize their own risk management parameters when entering orders, minimizing the likelihood of a Market Maker’s erroneous order from being entered. The Exchange believes that Market Makers, unlike other market participants, have the ability to manage their risk when submitting IOC orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting obligations the Exchange imposes on these participants.

The Exchange believes that allowing Market Makers to submit IOC orders through their preferred protocol increases their efficiency in submitting such orders and thereby allows them to maintain quality markets to the benefit of all market participants that trade on the Exchange. Further, unlike other market participants, Market Makers provide liquidity to the market place and have obligations.<sup>10</sup> Thus, the Exchange opted to not offer Size Limitation for IOC orders entered through SQF because Market Makers have more sophisticated infrastructures than other market participants and are able to manage their risk.

Similarly, the Exchange also proposes to amend Options 3, Section 7(c)(3) which describes an Opening Only or “OPG” order. Today, an OPG order can only be executed in the Opening Process pursuant to Options 3, Section 8. The rule currently states that this order type is not subject to any protections listed in Options 3, Section 15 describing risk protections. With the proposed addition of Size Limitation to proposed new Options 3, Section 15(b)(2) and Options 3, Section 16(e), the Exchange proposes

to note within Options 3, Section 7(c)(3) that OPG orders are subject to Size Limitation. OPG orders are entered during the Opening Process “Financial Information eXchange” or “FIX”. Also, any participant may enter an OPG order and be subject to Size Limitation protections.

#### Non-Substantive Amendments

The Exchange proposes to amend the Rulebook shell to add a new Equity 3A and reserve that section. Equity 3A will be utilized by the Nasdaq BX, Inc. (“BX”) Rulebook and the Exchange proposes to reserve that section in this Rulebook to demonstrate the section does not exist for the Exchange’s equity market.

The Exchange proposes to make minor technical amendments to Options 1, Section 1(b)(27) which describes a Lead Market Maker. The Exchange proposes to change an “an” to “the” and capitalize the term “Trading Floor.”

The Exchange proposes to amend Options 2, Section 12(a)(1), Registration and Functions of Options Lead Market Makers, to add a parenthetical and space that were missing.

Finally, the Exchange proposes to amend the description of a Specialized Quote Feed within Options 3, Section 7(a)(i)(B) to make plural the word “request” and also add an “.” after an e.g to conform the punctuation in the paragraph.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

#### Options 2, Section 4

The Exchange’s proposal to amend Options 2, Section 4(b)(5) is consistent with the Act because the paragraph will read as intended. In the Rulebook Relocation, the Exchange amended the term “ROT” to “Market Maker.”<sup>13</sup> Pursuant to Options 1, Section 1(b)(28), the term “Market Maker” means an SQT or an RSQT who enters quotations for his own account electronically into the System. An RSQT is only one type of Market Maker, the other is an SQT. The original term “ROT” included both SQTs and RSQTs and therefore the Exchange proposes to revert back to the broader term “Market Maker.” While

<sup>7</sup> “Financial Information eXchange” or “FIX” is an interface that allows members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) Execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. See Options 3, Section 7(a)(i)(A).

<sup>8</sup> “Specialized Quote Feed” or “SQF” is an interface that allows Lead Market Makers, RSQTs, SQTs to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) Options symbol directory messages (e.g. underlying and complex instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Lead Market Maker, SQT or RSQT. Lead Market Makers, SQTs and RSQTs may only enter interest into SQF in their assigned options series.

<sup>9</sup> The Exchange notes that Lead Market Makers are also Market Makers for purposes of the Options 3, Section 7 discussion.

<sup>10</sup> Lead Market Makers have quoting obligations during the Opening Process as specified in Options 3, Section 8 and Market Makers and Lead Market Makers have intra-day quoting obligations as specified in Options 2, Section 5.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See *supra* note 4.



the Rulebook Relocation amended the term “specialist” to “Lead Market Maker,” the Exchange notes that the term “specialist” within prior Rule 1014, which is now Options 2, Section 4(b)(5), did not refer to a Phlx participant also known as a “specialist,” rather the term referred to an individual that engages in market making pursuant to the Act. The Exchange proposes to replace the term “Lead Market Maker” with the term “specialist” which shall mean, for purposes of this rule, an individual that engages in market making. The term “specialist” is broader than the term “Lead Market Maker.” This proposal reverts back to language previously used and should capture the universe of market makers the rule was originally intended to capture.

The remainder of the proposed amendments to Options 2, Section 4 are non-substantive technical amendments that are intended to bring greater clarity to the Exchange’s Rules.

Options 3, Section 15 and Options 3, Section 16

The Exchange’s proposal to add provisions within Options 3, Section 15 at paragraph (b)(2), related to Simple Order Risk Protections, and Options 3, Section 16 at paragraph (e), related to Complex Order Risk Protections, to describe a current limitation that exists within its rules today as to the number of contracts an incoming order or quote may specify is consistent with the Act. The proposal is intended to describe a current limitation that exists today as to the number of contracts an incoming order or quote may specify. Specifically, for simple orders, the maximum number of contracts, which shall not be less than 10,000 contracts, is established by the Exchange from time-to-time. For Complex Orders, the maximum number of contracts (or shares), which shall not be less than 10,000 contracts (or 100,000 shares), is established by the Exchange from time-to-time. Orders or quotes that exceed the maximum number of contracts/shares are rejected. This System limitation is the same on all Nasdaq affiliated exchanges.<sup>14</sup> Today, ISE, GEMX and MRX describe this limitation within its rules at Options 3, Section 15(a)(2)(B) and ISE and MRX describe the limitation in Options 3, Section 16(c)(2). Phlx proposes to similarly describe this limitation in its rules.

Options 3, Section 7

The Exchange’s proposal to amend Options 3, Section 7(c)(2) with respect to IOC orders is consistent with the Act.

Today, the Exchange describes an IOC order as a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled.<sup>15</sup> Options 3, Section 7(c)(2)(B) provides that IOC orders may be entered through FIX or SQF, provided that an IOC order entered by a Market Maker through SQF is not subject to the Order Price Protection or the Market Order Spread Protection in Options 3, Section 15(a)(1) and (a)(2) respectively. With the proposed additions of the Size Limitation within Options 3, Section 15(b)(2) and Options 3, Section 16(e), the Exchange also proposes to note that Size Limitation does not apply to IOC orders entered through SQF. The Exchange notes these exceptions within this rule to make clear that this information is available to market participants within the description of IOC.

The Exchange notes that while only orders are entered into FIX, SQF is a quote protocol that also permits Market Makers to enter IOC orders that do not rest on the order book. The Exchange has not elected to utilize Size Limitation on SQF as it did for FIX because Market Makers only utilize SQF to enter IOC orders and Market Makers are professional traders with their own risk settings. FIX, on the other hand, is utilized by all market participants who unlike Market Makers may not have their own risk settings. Market Makers utilize IOC orders to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these IOC orders to offload risk, is vital for Market Makers, and allows them to maintain tight markets and meet their quoting and other obligations to the market. Market Makers handle a large amount of risk when quoting and in addition to the risk protections required by the Exchange. Market Makers utilize their own risk management parameters when entering orders, minimizing the likelihood of a Market Maker’s erroneous order from being entered. The Exchange believes that Market Makers, unlike other market participants, have the ability to manage their risk when submitting IOC orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting obligations the Exchange imposes on these participants.

The Exchange believes that allowing Market Makers to submit IOC orders through their preferred protocol increases their efficiency in submitting

such orders and thereby allows them to maintain quality markets to the benefit of all market participants that trade on the Exchange. Further, unlike other market participants, Market Makers provide liquidity to the market place and have obligations.<sup>16</sup> The Exchange believes not offering Size Limitation for IOC orders entered through SQF is consistent with the Act because Market Makers have more sophisticated infrastructures than other market participants and are able to manage their risk.

The Exchange’s proposal to amend OPG orders within Options 3, Section 7(c)(3) to make clear that Size Limitation applies to OPG orders is consistent with the Act as this rule text will clarify the existing language and make clear that Size Limitation is applicable to the order type. OPG orders are entered during the Opening Process utilizing FIX. Any participant may enter an OPG order. The Exchange’s proposal to amend Options 3, Section 7(c)(3) to make clear that Size Limitation applies to OPG orders is consistent with the Act as this rule text will clarify the existing language and make clear that Size Limitation is applicable to this order type.

Non-Substantive Amendments

The Exchange’s proposal to add a new Equity 3A and reserve that section, and amend Options 1, Section 1(b)(27), Options 2, Section 12 and Options 3, Section 7(a)(i)(B) to make technical changes, are consistent with the Act as these changes will add clarity to the Exchange’s rules.

*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 2, Section 4

The Exchange’s proposal to amend Options 2, Section 4(b)(5) does not impose an undue burden on competition because the paragraph will read as intended. The Exchange’s proposal will make clear that all participants engaged in market making activities are specialists pursuant to the Act.<sup>17</sup>

The remainder of the proposed amendments to Options 2, Section 4 are non-substantive technical amendments.

<sup>14</sup> See *supra* note 5.

<sup>15</sup> See Options 3, Section 7(c)(2).

<sup>16</sup> See *supra* note 10.

<sup>17</sup> 15 U.S.C. 78s(b)(1).



Options 3, Section 15 and Options 3, Section 16

The Exchange's proposal to add provisions within Options 3, Section 15 at paragraph (b)(2), related to Simple Order Risk Protections, and Options 3, Section 16 at paragraph (e), related to Complex Order Risk Protections, to describe a current limitation that exists within its rules today as to the number of contracts an incoming order or quote may specify does not impose an undue burden on competition. The proposal is intended to describe a current limitation that exists today as to the number of contracts an incoming order or quote may specify. This System limitation is the same on all Nasdaq affiliated exchanges.<sup>18</sup> Today, ISE, GEMX and MRX describe this limitation within its rules at Options 3, Section 15(a)(2)(B) and ISE and MRX describe this limitation within Options 3, Section 16(c)(2). Phlx proposes to similarly describe this limitation in its rules.

Options 3, Section 7

The Exchange's proposal to amend Options 3, Section 7(c)(2) with respect to IOC orders does not impose an undue burden on competition. With the proposed additions of the Size Limitation within Options 3, Section 15(b)(2) and Options 3, Section 16(e), the Exchange also proposes to note that Size Limitation does not apply to IOC orders entered through SQF. Unlike other market participants, Market Makers provide liquidity to the market place and have obligations.<sup>19</sup>

The Exchange's proposal to amend Options 3, Section 7(c)(3) to make clear that Size Limitation applies to OPG orders does not impose an undue burden on competition as this rule text will clarify the existing language and make clear that Size Limitation is applicable to this order type. OPG orders are entered during the Opening Process utilizing FIX.

Non-Substantive Amendments

The Exchange's proposal to add a new Equity 3A and reserve that section, and amend Options 1, Section 1(b)(27), Options 2, Section 12 and Options 3, Section 7(a)(i)(B) to make technical changes, do not impose an undue burden on competition as these changes will add clarity to the Exchange's rules.

*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) of the Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that other exchanges have substantively similar rules regarding size limitation for certain incoming orders or quotes.<sup>22</sup> The Exchange's proposal will also revert a rule unintentionally modified to its original intention. Finally, the non-substantive amendments should clarify the Exchange's rules. Thus, the Commission believes waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates this proposal operative upon filing.<sup>23</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PLX-2021-32 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PLX-2021-32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PLX-2021-32 and should be submitted on or before July 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-12120 Filed 6-9-21; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>18</sup> See *supra* note 5.

<sup>19</sup> See *supra* note 10.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>22</sup> See *supra* note 5.

<sup>23</sup> 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).

**SECURITIES AND EXCHANGE COMMISSION**

[SEC File No. 270–321, OMB Control No. 3235–0358]

**Submission for OMB Review; Comment Request**

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

*Extension:*  
Rule 11a–3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the “Commission”) has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 11(a) of the Investment Company Act of 1940 (“Act”) (15 U.S.C. 80a–11(a)) provides that it is unlawful for a registered open-end investment company (“fund”) or its underwriter to make an offer to the fund’s shareholders or the shareholders of any other fund to exchange the fund’s securities for securities of the same or another fund on any basis other than the relative net asset values (“NAVs”) of the respective securities to be exchanged, “unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers.” Section 11(a) was designed to prevent “switching,” the practice of inducing shareholders of one fund to exchange their shares for the shares of another fund for the

purpose of exacting additional sales charges.

Rule 11a–3 (17 CFR 270.11a–3) under the Act of 1940 is an exemptive rule that permits open-end investment companies (“funds”), other than insurance company separate accounts, and funds’ principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund’s shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule’s requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds’ use of administrative fees charged in connection with exchange transactions.

The staff estimates that there are approximately 1,397 active open-end investment companies registered with the Commission as of October 2020. The staff estimates that 25 percent of these funds (349 funds) impose a non-

nominal administrative fee on exchange transactions. The staff estimates that the recordkeeping requirement of the rule requires approximately 1 hour annually of clerical time (at an estimated \$63 per hour)<sup>1</sup> per fund, for a total of 349 hours for all funds (at a total annual cost of \$21,987).<sup>2</sup>

The staff estimates that 5 percent of these 1,397 funds (or 70 funds) terminate an exchange offer or make a material change to the terms of their exchange offer each year, requiring the fund to comply with the notice requirement of the rule. The staff estimates that complying with the notice requirement of the rule requires approximately 1 hour of attorney time (at an estimated \$419 per hour)<sup>3</sup> and 2 hours of clerical time (at an estimated \$63 per hour) per fund, for a total of approximately 210 hours for all funds to comply with the notice requirement (at a total annual cost of \$38,150).<sup>4</sup> The staff estimates that such notices will be enclosed with other written materials sent to shareholders, such as annual shareholder reports or account statements, and therefore any burdens associated with mailing required notices are accounted for in the burdens associated with Form N–1A registration statements for funds.

The recordkeeping and notice requirements together impose an estimated total burden of 559 hours on all funds (at a total annual cost of \$60,137).<sup>5</sup> The total number of respondents is 419, each responding once a year.<sup>6</sup> The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

Table 1 below summarizes the currently-approved and updated burdens associated with rule 11a–3.

**TABLE 1—SUMMARY OF BURDEN ESTIMATES FOR RULE 11a–3**

	Internal burden	Wage rate	Cost of internal burden
<b>Currently-Approved Burden Estimates</b>			
Recordkeeping Requirement .....	1 hour .....	\$59/hr. (clerk) .....	\$59.
Respondents .....	402 funds .....	.....	402 funds.

<sup>1</sup> This estimate of \$63 per hour for clerical work and the other estimated wage rates below are derived from the Securities Industry and Financial Markets Association’s (“SIFMA”) Office Salaries in the Securities Industry 2013, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead (updated for inflation).

<sup>2</sup> This estimate is based on the following calculations: (1,397 funds × 25% = 349 funds); (349 × 1 (clerical hour) = 349 clerical hours); (349 × \$ 63 = \$21,987 total annual cost for recordkeeping requirement).

<sup>3</sup> The estimate of \$419 per hour for an Attorney is derived from SIFMA’s Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead (adjusted for inflation).

<sup>4</sup> This estimate is based on the following calculations: (1,397 (funds) × 5% = 70 funds); (70 × 1 (attorney hour) = 70 total attorney hours); (70 (funds) × 2 (clerical hours) = 140 total clerical hours); (70 (attorney hours) + 140 (clerical hours) = 210 total hours); (70 (attorney hours) × \$419 =

\$29,330 total attorney cost); (140 (clerical hours) × \$63 = \$8,820 clerical cost); (\$29,330 + \$8,820 = \$38,150 total annual cost).

<sup>5</sup> This estimate is based on the following calculations: (210 (notice hours) + 349 (recordkeeping hours) = 559 total hours); (\$38,150 (notice costs) + \$21,987 (recordkeeping costs) = \$60,137 total annual costs).

<sup>6</sup> This estimate is based on the following calculation: (349 funds responding to recordkeeping requirement + 70 funds responding to notice requirement = 419 total respondents).

TABLE 1—SUMMARY OF BURDEN ESTIMATES FOR RULE 11a-3—Continued

	Internal burden	Wage rate	Cost of internal burden
Total .....	402 hours .....	.....	\$23,718.
Notice Requirement .....	1 hour .....	\$392/hr. (attorney) .....	\$392.
	2 hours .....	\$59/hr. (clerk) .....	\$118.
Respondents .....	80 funds .....	.....	80 funds.
Total .....	240 hours .....	.....	\$40,800.
Total Responses (Recordkeeping + Notice).	482.		
Total Burden (Recordkeeping + Notice) ...	642 hours .....	.....	\$64,518.
<b>Updated Burden Estimates</b>			
Recordkeeping Requirement .....	1 hour .....	\$63/hr. (clerk) .....	\$63.
Respondents .....	349 funds .....	.....	349 funds.
Total .....	349 hours .....	.....	\$21,987.
Notice Requirement .....	1 hour .....	\$419/hr. (attorney) .....	\$419.
	2 hours .....	\$63/hr. (clerk) .....	\$126.
Respondents .....	70 funds .....	.....	70 funds.
Total .....	210 hours .....	.....	\$38,150.
Total Responses (Recordkeeping + Notice).	419.		
Total Burden (Recordkeeping + Notice) ...	559 hours .....	.....	\$60,137.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: June 4, 2021.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-12101 Filed 6-9-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-563, OMB Control No. 3235-0694]

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

*Extension:*  
Rule 17g-10 and Form ABS Due Diligence—15E

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 (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in Rule 17g-10 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).<sup>1</sup>

Rule 17g-10 contains certain certification requirements for third-party due diligence service providers that are employed by an NRSRO, an issuer, or an underwriter, which must be made on Form ABS Due Diligence—15E. The Commission estimates that the

total burden for respondents to comply with Rule 17g-10 is 330 hours.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: June 4, 2021.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-12112 Filed 6-9-21; 8:45 am]

BILLING CODE 8011-01-P

<sup>1</sup> See 17 CFR 240.17g-1 and 17 CFR 249b.300.

**SMALL BUSINESS ADMINISTRATION****National Small Business Development Center Advisory Board**

**AGENCY:** Small Business Administration.

**ACTION:** Notice of open Federal Advisory Committee meeting.

**SUMMARY:** The SBA is issuing this notice to announce the date, time and agenda for a meeting of the National Small Business Development Center Advisory Board. The meeting will be open to the public; however, advance notice of attendance is required.

**DATES:** Wednesday, July 28, 2021 at 2:00 p.m. EDT.

**ADDRESSES:** Meeting will be held via Microsoft Teams.

**FOR FURTHER INFORMATION CONTACT:** Rachel Karton, Office of Small Business Development Centers, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; *Rachel.newman-karton@sba.gov*; 202-619-1816.

If anyone wishes to be a listening participant or would like to request accommodations, please contact Rachel Karton at the information above.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

**Purpose**

The purpose of the meeting is to discuss the following issues pertaining to the SBDC Program:

- Cybersecurity
- Outreach to underserved communities
- Strategies for getting Small Business back to normal

**Andrienne Johnson,**

*Committee Management Officer.*

[FR Doc. 2021-12222 Filed 6-9-21; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration**

[Docket No. PHMSA-2021-0050]

**Pipeline Safety: Statutory Mandate To Update Inspection and Maintenance Plans To Address Eliminating Hazardous Leaks and Minimizing Releases of Natural Gas From Pipeline Facilities**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice; issuance of advisory bulletin.

**SUMMARY:** PHMSA is issuing this advisory bulletin to remind each owner and operator of a pipeline facility that the “Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020” (PIPES Act of 2020) contains a self-executing mandate requiring operators to update their inspection and maintenance plans to address eliminating hazardous leaks and minimizing releases of natural gas (including intentional venting during normal operations) from their pipeline facilities. Operators must also revise their plans to address the replacement or remediation of pipeline facilities that are known to leak based on their material, design, or past operating and maintenance history. The statute requires pipeline operators to complete these updates by December 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Sayler Palabrica, by phone at 202-366-0559 or by email at *Sayler.Palabrica@dot.gov*.

**SUPPLEMENTARY INFORMATION:** Natural gas is composed primarily of methane, therefore leaks and other releases of natural gas emit methane gas into the atmosphere. According to the U.S. Environmental Protection Agency (EPA), methane is a potent greenhouse gas with a global warming potential (GWP) of 28–36 over 100 years.<sup>1</sup> Compared to carbon dioxide, methane gas has a stronger warming effect, but a shorter lifespan in the atmosphere. Due to the high GWP and short lifespan of methane gas in the atmosphere, minimizing releases of natural gas (both fugitive and vented emissions) has relatively near-term benefits to mitigating the consequences of climate change. Likewise, remediation or replacement of pipeline facilities that

are known to leak based on material, design or past operating and maintenance history can result in enhanced public safety, environmental protection, and economic benefits.

The “Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020” (Pub. L. 116-260, Division R; “PIPES Act of 2020”) was signed into law on December 27, 2020. This law contains several provisions that specifically address the elimination of hazardous leaks and minimization of releases of natural gas from pipeline facilities. Section 114(b) of the PIPES Act of 2020 contains self-executing provisions that apply directly to pipeline operators. This section requires each pipeline operator to update its inspection and maintenance plan required under 49 U.S.C. 60108(a) no later than one year after the date of enactment of the PIPES Act of 2020 (*i.e.*, by December 27, 2021) to address the elimination of hazardous leaks and minimization of releases of natural gas (including, and not limited to, intentional venting during normal operations) from the operators’ pipeline facilities (49 U.S.C. 60108(a)(2)(D)). The PIPES Act of 2020 also requires those plans to address the replacement or remediation of pipelines that are known to leak due to their material (including cast iron, unprotected steel, wrought iron, and historic plastics with known issues), design, or past operating and maintenance history (49 U.S.C. 60108(a)(2)(E)). In addition, 49 U.S.C. 60108(a)(2) requires that operators continue updating these plans to meet the requirements of any future regulations related to leak detection and repair that are promulgated under 49 U.S.C. 60102(q).

**Advisory Bulletin (ADB-2021-01)**

*To:* Owners and Operators of Gas and Hazardous Liquid Pipeline Facilities.

*Subject:* Statutory Mandate to Update Inspection and Maintenance Plans to Address Eliminating Hazardous Leaks and Minimizing Releases of Natural Gas from Pipeline Facilities.

*Advisory:* The PIPES Act of 2020 contains self-executing provisions requiring pipeline facility operators to update their inspection and maintenance plans to address the elimination of hazardous leaks and minimization of releases of natural gas (including, and not limited to, intentional venting during normal operations) from their systems before December 27, 2021. PHMSA expects that operators will comply with the inspection and maintenance plan revisions required in the PIPES Act of 2020 by revising their operations and

<sup>1</sup>“Understanding Global Warming Potentials,” U.S. EPA, available at <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>.

maintenance (O&M) plans required under 49 CFR 192.605, 193.2017, and 195.402, to address the elimination of hazardous leaks and minimize releases of natural gas from pipeline facilities. The plans must also address the replacement or remediation of pipelines that are known to leak due to their material (including cast iron, unprotected steel, wrought iron, and historic plastics with known issues), design, or past O&M history. The plans must be in writing, tailored to the operator's pipeline facilities, supported by technical analysis where necessary, and sufficiently detailed to clearly describe the manner in which each requirement is met. For additional guidance on O&M plans for hazardous liquid and natural gas pipeline facilities, see "Operations & Maintenance Enforcement Guidance," part 192 subparts L and M, page 17, available at <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/regulatory-compliance/pipeline/enforcement/5776/o-m-enforcement-guidance-part-192-7-21-2017.pdf>; and "Operations & Maintenance Enforcement Guidance," part 195 subpart F, page 18, available at <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/regulatory-compliance/pipeline/enforcement/5781/o-m-enforcement-guidance-part-195-7-21-2017.pdf>.

Pursuant to 49 U.S.C. 60108(a)(3), as amended by section 114(a) of the PIPES Act of 2020, PHMSA and state authorities with a certification under 49 U.S.C. 60105 will inspect operators' revised O&M plans in calendar year 2022, and such inspections must be completed by December 27, 2022. During these inspections, PHMSA, or the relevant state authority, is required to evaluate whether the plans adequately address items listed in section 114 of the PIPES Act of 2020.

Operators need to consider the following items as they update their plans to comply with section 114 of the PIPES Act of 2020:

- O&M plans must be detailed to address the elimination of hazardous leaks and minimization of releases of natural gas from the operators' pipeline facilities; meaning pipeline operators must update their plans to minimize, among other things, fugitive emissions and vented emissions from pipeline facilities. PHMSA and state inspections, therefore, will evaluate the steps taken to prevent and mitigate both unintentional, fugitive emissions as well as intentional, vented emissions. Fugitive emissions include any unintentional leaks from equipment such as pipelines, flanges, valves, meter sets, or other equipment. Vented

emissions include any release of natural gas to the atmosphere due to equipment design or operations and maintenance procedures. Common sources of vented emissions include pneumatic device bleeds, blowdowns, incomplete combustion, or overpressure protection venting (e.g., relief valves).

- O&M plans must address the replacement or remediation of pipelines that are known to leak based on the material (including cast iron, unprotected steel, wrought iron, and historic plastics with known issues), design, or past operating and maintenance history of the pipeline. PHMSA and state inspections will include an evaluation of how the material present in the pipeline system, design of the system, as well as the past O&M history of the system, contribute to the leaks that occur on the system. PHMSA and states will evaluate whether the plans adequately address reducing leaks on operators' pipeline systems due to the aforementioned factors.

- Operators must carry out a current, written O&M plan to address public safety and the protection of the environment. In addition to the new statutory requirement that PHMSA and state inspections consider the extent to which the plans will contribute to the elimination of hazardous leaks and minimizing releases of natural gas from pipeline facilities, PHMSA's inspections will continue to include an evaluation of the extent to which the plans contribute to both public safety and the protection of the environment.

Developing and implementing comprehensive written O&M plans is an effective way to eliminate hazardous leaks and minimize the release of natural gas from pipeline systems. PHMSA anticipates these self-executing statutory mandates will result in enhanced public safety and reductions in pipeline emissions thereby reducing impact on the environment.

Issued in Washington, DC, on June 4, 2021, under authority delegated in 49 CFR 1.97.

**Alan K. Mayberry,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 2021-12155 Filed 6-9-21; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

[Docket ID OCC-2021-0010]

#### Mutual Savings Association Advisory Committee

**AGENCY:** Department of the Treasury, Office of the Comptroller of the Currency (OCC).

**ACTION:** Notice of federal advisory committee meeting.

**SUMMARY:** The OCC announces a meeting of the Mutual Savings Association Advisory Committee (MSAAC).

**DATES:** A virtual public meeting of the MSAAC will be held on Tuesday, June 29, 2021, beginning at 9:00 a.m. Eastern Daylight Time (EDT).

**ADDRESSES:** The OCC will host the June 29, 2021 meeting of the MSAAC virtually.

**FOR FURTHER INFORMATION CONTACT:**

Michael R. Brickman, Deputy Comptroller for Thrift Supervision, (202) 649-5420, Office of the Comptroller of the Currency, Washington, DC 20219. You also may access prior MSAAC meeting materials on the MSAAC page of the OCC's website at Mutual Savings Association Advisory Committee.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the regulations implementing the Act at 41 CFR part 102-3, the OCC is announcing that the MSAAC will convene a virtual meeting on Tuesday, June 29, 2021. The meeting is open to the public and will begin at 9:00 a.m. EDT. The purpose of the meeting is for the MSAAC to advise the OCC on regulatory or other changes the OCC may make to ensure the health and viability of mutual savings associations. The agenda includes a discussion of current topics of interest to the industry.

Members of the public may submit written statements to the MSAAC. The OCC must receive written statements no later than 5:00 p.m. EDT on Thursday, June 24, 2021. Members of the public may submit written statements to [MSAAC@occ.treas.gov](mailto:MSAAC@occ.treas.gov).

Members of the public who plan to attend the virtual meeting should contact the OCC by 5:00 p.m. EDT on Thursday, June 24, 2021, to inform the OCC of their desire to attend the meeting and to obtain information about participating in the meeting. Members of the public may contact the OCC via email at [MSAAC@OCC.treas.gov](mailto:MSAAC@OCC.treas.gov) or by

telephone at (202) 649-5420. Members of the public who are hearing impaired should call (202) 649-5597 (TTY) by 5:00 p.m. EDT on Thursday, June 24, 2021, to arrange auxiliary aids for this meeting.

Attendees should provide their full name, email address, and organization, if any.

**Michael J. Hsu,**

*Acting Comptroller of the Currency.*

[FR Doc. 2021-12163 Filed 6-9-21; 8:45 am]

**BILLING CODE 4810-33-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, July 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Fred Smith at 1-888-912-1227 or (202) 317-3087.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Thursday, July 8, 2021 at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1-888-912-1227 or (202) 317-3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC

20224 or contact us at the website: <http://www.improveirs.org>.

Dated: June 4, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021-12118 Filed 6-9-21; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, July 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Fred Smith at 1-888-912-1227 or (202) 317-3087.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Thursday, July 8, 2021 at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1-888-912-1227 or (202) 317-3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: <http://www.improveirs.org>.

Dated: June 4, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021-12119 Filed 6-9-21; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, July 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Matthew O'Sullivan at 1-888-912-1227 or (510) 907-5274.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be held Thursday, July 8, 2021, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1-888-912-1227 or (510) 907-5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612-5217 or contact us at the website: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: June 4, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021-12096 Filed 6-9-21; 8:45 am]

**BILLING CODE 4830-01-P**



# FEDERAL REGISTER

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Part II

Department of Transportation

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Federal Aviation Administration

14 CFR Parts 11, 91, and 111

Pilot Records Database; Final Rule

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 11, 91, and 111**

[Docket No.: FAA–2020–0246; Amdt. Nos. 11–65, 91–363, and 111–1]

RIN 2120–AK31

**Pilot Records Database**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts final regulations for the use of an electronic Pilot Records Database (PRD) and implements statutory requirements to facilitate the sharing of pilot records among air carriers and other operators in an electronic data system managed by the FAA. This final rule requires air carriers, specific operators holding out to the public, entities conducting public aircraft operations, air tour operators, fractional ownerships, and corporate flight departments to enter relevant data on individuals employed as pilots into the PRD. In addition, this rule identifies the air carriers and operators required to access the PRD to evaluate the available data for each pilot candidate prior to making a hiring decision.

**DATES:**

*Effective date:* This rule is effective August 9, 2021, except for the amendments at instruction 7, which is effective October 8, 2021; instructions 8 and 9, which are effective June 10, 2022; instructions 4, 11, and 12, which are effective September 9, 2024; instruction 13, which is effective September 8, 2027; and instructions 6, 10, and 14, which are effective September 10, 2029.

*Compliance dates:* For the requirements in § 111.15, compliance is required by September 8, 2021. Compliance with subpart B of part 111 is required beginning June 10, 2022, except the requirements in § 111.105(b)(1), for which compliance is required beginning December 7, 2021. Compliance with subpart C of part 111 is required beginning June 10, 2022.

In § 111.255, compliance for reporting historical records that date on or after January 1, 2015 is required by June 12, 2023. Compliance for reporting historical records that date before January 1, 2015 is required by September 9, 2024. Concurrent compliance with the requirements of the Pilot Records Improvement Act will end on September 9, 2024.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Morris, 3500 S MacArthur

Blvd., ARB301, Oklahoma City, Oklahoma 73179; telephone (405) 954–4646; email *christopher.morris@faa.gov*.

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**List of Abbreviations and Acronyms Used Frequently in This Document**

AC—Advisory Circular  
 ARC—Aviation Rulemaking Committee  
 CFR—Code of Federal Regulations  
 FOIA—Freedom of Information Act  
 InFO—Information for Operators  
 NDR—National Driver Register  
 NPRM—Notice of Proposed Rulemaking  
 NTSB—National Transportation Safety Board  
 PAC—Public Aircraft Operations, Air Tour Operators, Corporate Flight Departments  
 PAO—Public Aircraft Operations  
 PAR—PRD Airman Record  
 PRD—Pilot Records Database  
 PRIA—Pilot Records Improvement Act

**I. Executive Summary****A. Purpose of the Final Rule**

This final rule amends Title 14 of the Code of Federal Regulations (14 CFR) by adding new part 111, Pilot Records Database (PRD). This final rule facilitates the transition from the information-sharing requirements of the Pilot Records Improvement Act (PRIA)<sup>1</sup> to an FAA-established electronic database, as required by the PRD Act.<sup>2</sup>

This final rule modernizes pilot record-sharing as it occurs currently under PRIA. The PRD will serve as a repository for pilot records and will contain records from a pilot's current and former employers, as well as the FAA. The FAA envisions that the PRD not only will be an indicator of pilots' abilities or deficiencies, but also that it will prompt conversations between applicants and hiring employers. PRD is intended to help ensure that no records about a pilot's performance with previous employers that could influence a future employer's decision go unidentified.

**B. Overview of the Final Rule**

This final rule requires all 14 CFR part 119 certificate holders, fractional ownership programs, persons holding a letter of authorization (LOA) to conduct air tour operations in accordance with § 91.147, persons conducting certain operations under part 91 or part 125 (referenced as “corporate flight departments” or “corporate operators” in this preamble),<sup>3</sup> and governmental entities conducting public aircraft operations (PAO) to report records to the pilot records database in new 14 CFR part 111. This rule uses the term “reporting entity” when referencing such requirements.

Part 119 certificate holders, fractional ownership programs and persons conducting air tour operations must review records prior to allowing an individual to begin service as a pilot. This rule refers to the different operators

<sup>1</sup> Public Law 104–264 section 502; 110 Stat. 3259. The requirements of PRIA were initially codified at 49 U.S.C. 44936, which became effective on February 7, 1997. Substantive amendments were made to PRIA on December 5, 1997 (Pub. L. 105–142; 111 Stat. 2650) and April 5, 2000 (Pub. L. 106–181; 114 Stat. 61). Currently, the requirements of PRIA are codified at 49 U.S.C. 44703(h) and (j).

<sup>2</sup> 49 U.S.C. 44703(i) (Pub. L. 111–216, 124 Stat. 2348 (Aug. 1, 2020)). Referred to as “the PRD Act” for the remainder of this preamble.

<sup>3</sup> The FAA uses the term corporate flight departments to reference operators of two or more aircraft conducting operations in furtherance of or incidental to a business, solely pursuant to the general operating and flight rules in part 91 or operating aircraft pursuant to a Letter of Deviation Authority issued under § 125.3. This criteria is provided in § 111.1(b)(4).



subject to part 111 as “operators” generally, but also as “reviewing entity” when referencing these requirements.

The PRD will contain the required operator and FAA records for the life of the pilot and will function as a hiring tool that an operator will use in making decisions regarding pilot employment. Employers cannot search the PRD indiscriminately, as an operator that wishes to view records can see a pilot’s record only if that pilot has granted consent to that hiring employer. Pilot consent is time-limited and the duration is specified by the pilot. The FAA anticipates the PRD will improve pilot privacy because only specific data elements are required to be submitted, in contrast to current practice under PRIA, in which pilot records are exchanged in their entirety. The PRD

will indicate what records exist about a pilot; the operator is responsible for determining if it is necessary to obtain further information prior to permitting an individual to begin service as a pilot.

The Pilot Records Database Notice of Proposed Rulemaking (NPRM) published on March 30, 2020, and the comment period closed June 29, 2020. The FAA received approximately 800 comments. After careful consideration of these comments and thoughtful review of the proposal, the FAA adopts this final rule with certain modifications from the proposal. These modifications will reduce burdens while achieving the safety goals Congress intended for the PRD. The modifications will:

- Remove the proposed user fee to access the database for review of pilot records.

- Update the method of reporting to the PRD for certain operators without a part 119 certificate. Instead of providing records contemporaneously for all pilots employed, corporate flight departments, air tour operations, and public aircraft operations will be permitted not to upload training, disciplinary, and separation from employment records to the PRD unless and until requested by a hiring operator. Certain termination and disciplinary action records must be reported contemporaneously, however.

- Revise the level of detail required for reporting certain training and checking; disciplinary action; and separation from employment events to ensure all relevant records are captured while reducing subjectivity.
- Amend the compliance schedule, as set forth in the table below:

TABLE 1—TIMELINE FOR REPORTING AND REVIEWING RESPONSIBILITIES

Date	90 Days after publication	180 Days after publication	One year after publication	Two years after publication	Three years and 90 days after publication
Event .....	Submit application for database access.	Reviewing entities use the PRD for the FAA records review.	Begin reporting current pilot records, historical records; begin reviewing operator records in the PRD.	Complete historical record reporting for records dating on or after January 1, 2015.	Compliance with PRIA will no longer be available as an alternative to PRD; full compliance with PRD required. Historical record upload complete.
Entity .....	Reporting entities and reviewing entities.	Reviewing entities.	Reporting entities and reviewing entities.	Reporting entities subject to § 111.255.	Reporting entities, reviewing entities.

14 CFR part 111 contains four subparts. Subpart A contains the general requirements of part 111, including how to submit an application for database access and other details about user roles within the PRD. Subpart B provides requirements for operators reviewing records—in particular, details regarding employer obligations during the record review process for both the FAA records and records submitted by an entity reporting records. Subpart C contains provisions for record reporting, including which records to report and timelines for reporting records. Subpart D provides requirements and information regarding pilots’ access to the PRD.

1. PRD Access Requirements and Restrictions

Subpart A of part 111 provides general requirements for use of the PRD. It includes provisions on applicability, definitions, requirements for compliance timeframes, database access, fraud and falsification, and record retention.

Part 111 applies to each operator holding an air carrier or operating certificate issued in accordance with part 119 and authorized to conduct operations under part 121, part 125, or part 135; operators holding an LOA

issued under § 91.147; operators holding management specifications for a fractional ownership program under subpart K of part 91; operators conducting operations as a corporate flight department; entities conducting certain PAO operations; trustees in bankruptcy of any operator; pilots; and other persons who might access the PRD. Part 111 does not apply to any foreign air carrier or operator of U.S. registered aircraft.

Designated responsible persons under part 111 must apply for access to the PRD. Such persons will manage records and user accounts, and be responsible for all actions taken within the PRD for a particular operator, entity, or trustee. This rule provides a list of the appropriate management positions that will qualify to serve as a responsible person for an operator. Consistent with Congress’ direction that the FAA protect the privacy and confidentiality of pilot records in the PRD, part 111 provides specific requirements for the responsible person’s application that will enable the FAA to evaluate sufficiently each request for access. The responsible person may delegate his or her authority to access the database to certain other persons, but continued access is contingent on the validity of

the responsible person’s electronic access.

The FAA will deny database access to any person for failure to comply with any of the duties and responsibilities prescribed under part 111, or as necessary to preserve the security and integrity of the database. No person may use the database for any purpose except as expressly authorized under part 111 and no person may share, distribute, publish, or otherwise release any record accessed in the database to any person or individual not directly involved in the hiring decision, unless specifically authorized by law, or unless the person sharing the record is the subject of the record.

Lastly, subpart A contains requirements concerning the length of time that records pertaining to an individual must remain within the PRD. Such records must remain in the database until either the FAA receives official notification of a pilot’s death or an FAA audit of the database indicates that 99 years have passed since the date of birth on record for a particular pilot.

2. Access to and Evaluation of Records

Under subpart B of part 111, part 119 certificate holders, fractional ownership programs, air tour operations holding a letter of authorization under § 91.147,

and trustees in bankruptcy of those entities must review a pilot's records in the PRD prior to permitting the pilot to begin service as a required flight crewmember. These operators are "reviewing entities." In order to access and evaluate a pilot's records, a reviewing entity must receive consent from that pilot.

As set forth in the PRD Act, each reviewing entity must preserve the privacy and confidentiality of the records accessed in the database and the persons accessing the records on behalf of each reviewing entity are subject to all terms of access set forth in subpart A.

Reviewing entities must evaluate both the FAA records and records provided by an operator (reporting entity) subject to this rule. The FAA records include:

- Records related to current pilot and medical certificate information, including associated type ratings and information on any limitations to those certificates and ratings;
- Records maintained by the Administrator concerning any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under 14 CFR part 61;
- Records related to enforcement actions resulting in a finding by the Administrator that was not subsequently overturned of a violation of Title 49 of the United States Code or a regulation prescribed or order issued under that title; and
- Records related to an individual acting as pilot in command or second in command during an aviation accident or incident.

Reviewing entities must also evaluate non-FAA records that the FAA includes in the PRD. Such records consist of an individual's pre-employment drug and alcohol testing history and other U.S. Department of Transportation drug and alcohol testing, including verified positive drug test results, alcohol misuse violations, including confirmed alcohol results of 0.04 or greater, and refusals to submit to drug or alcohol testing. Reviewing entities must begin using the PRD to evaluate the FAA records December 7, 2021.

Each reviewing entity must also evaluate any records submitted to the PRD by a reporting entity and must begin evaluating these records in the PRD on June 10, 2022. Reviewing entities must also evaluate any records obtained through the National Driver Register (NDR) process from the chief driver licensing official of a State.

Due to the possibility that a reporting entity might have additional records on request, the reviewing entity must

compare the pilot's list of former employers dating back five years and verify that no discrepancy exists between the pilot-provided employment history and the records available in the PRD.

### 3. Reporting of Records

Subpart C of part 111 requires reporting entities to submit records for each individual employed as a pilot, including drug and alcohol testing records under part 120, if applicable; training, qualification, and proficiency records, as applicable; final disciplinary action records; records concerning separation of employment; verification of a motor vehicle driving record search; and historical records. These records generally must be reported to the PRD contemporaneously, which for purposes of this preamble means within the time set by the FAA upon occurrence of the event causing creation of the record, typically 30 days.

Reporting entities include all reviewing entities, as well as corporate flight departments and public aircraft operations. Pursuant to the PRD Act, this rule includes requirements for record reporting by a trustee appointed by a bankruptcy court for an operator or entity subject to part 111, subpart C. This trustee must comply with all reporting requirements in part 111.

Certain records are not subject to required contemporaneous reporting. Each operator conducting PAO; air tour operations; and corporate flight departments are not required to report training qualification and proficiency records, certain final disciplinary action records, or certain records concerning separation of employment, unless and until they receive a request from a reviewing entity. If, however, the record memorializes a disciplinary action resulting in permanent or temporary removal of the pilot from aircraft operations or separation from employment resulting in termination, the record must be reported to the PRD contemporaneously. These operators must retain all records eligible for reporting upon request. If records are not available at the time of the request from the reviewing entity, these reporting entities must provide written confirmation to the FAA that no records are available.

No reporting entity may report pilot records related to a safety event that the entity reported as part of the Aviation Safety Action Program (ASAP) or any other approved Voluntary Safety Reporting Program.

If a reporting entity discovers or is informed that previously reported records contain inaccurate information,

that entity must correct the record within 10 days of knowledge that the record contains an error. When the reporting entity does not agree that the record contains an error, it must notify the pilot that the dispute will be resolved in accordance with the reporting entity's dispute resolution procedures. Each reporting entity must have a documented process for investigating and resolving record disputes in a reasonable amount of time. Once resolved, final disposition of the dispute must be documented in the PRD.

Air carriers and operators required to report historical records must complete submission of historical records generated on or after January 1, 2015 by June 12, 2023. Historical records preceding January 1, 2015 must be reported by September 9, 2024.

### 4. Pilot Access and Responsibilities

Subpart D of part 111 establishes requirements that apply to a pilot's access to the PRD. Each pilot must submit an application to the FAA to validate that pilot's identity for access to the PRD. Pilots provide consent to a reviewing entity to view their records through the PRD. Access also enables pilots to review their own records in the PRD. In the event a pilot is not able to meet the identity validation requirements associated with accessing the PRD, a pilot can receive a paper copy of his or her records by submitting a form to the FAA.

Pilots are responsible for designating which reviewing entities are able to access records for review. Before any operator may access a pilot's records in the PRD, the pilot must give written consent, designating the reviewing entity that will be allowed to access that pilot's records. Pilots must also provide separate written consent for operators to submit a request to the NDR for the pilot's motor vehicle driving record.

Pilots must verify that their employment history is complete and accurate. In addition, pilots who identify errors or inaccuracies in their respective PRD records are responsible for reporting the errors to the PRD. Once the FAA receives a report from the pilot of an error or inaccuracy, the FAA will designate the record as "in dispute" in the PRD. The record will remain designated as such until the entity that reported the record either corrects the record or completes the dispute resolution process.

### 5. Transition to PRD

Operators currently comply with PRIA. Continued use of PRIA is required to support a successful transition to

PRD. By September 9, 2024, the FAA intends to complete the transition from PRIA to PRD.

To support the transition, all operators subject to the applicability of part 111 must submit a responsible person application not later than September 8, 2021. The FAA will begin working with each subject operator and entity to facilitate a smooth transition. Additionally, reviewing entities must use the PRD to review the FAA records, beginning December 7, 2021.

Once the PRD begins accepting records on June 10, 2022, reporting entities must submit any new records generated on or after that date to the PRD. During this time, reporting entities must continue to respond to PRIA requests for historical records or, alternatively, report those historical records directly to the PRD for review. The PRD will display either a statement indicating a reporting entity has completed reporting all records for a pilot or a statement that the reviewing entity needs to submit a PRIA request to the reporting entity for records. The FAA envisions that as time goes on, records will be pre-populated in the PRD and any duplicative review of records will phase out. Duplicative reporting is never required; a reporting entity may always, beginning on June 10, 2022, upload a record to the PRD instead of responding to a PRIA request. Reviewing entities must also begin

reviewing records in the PRD on June 10, 2022, while continuing to comply with PRIA.

*C. Summary of Benefits, Costs, and Cost Savings*

This rule promotes aviation safety by facilitating operators' consideration of pilot skill and performance when making hiring and personnel management decisions by using the most accurate pilot records available and by making those records accessible electronically. After the effective date of the rule, operators will incur costs to report pilot records to the PRD and to train and register as users of the PRD. Operators will receive future cost savings once PRIA is phased out. The FAA will incur costs related to the operations and maintenance of the PRD.

Over a 10-year period of analysis (2021–2030), this rule results in present value net costs (costs less savings) to industry and the FAA of about \$67.0 million or \$9.5 million annualized using a seven percent discount rate. Using a three percent discount rate, this rule results in present value net costs of about \$71.0 million or about \$8.3 million annualized.

This rule provides recurring annual cost savings to industry because the PRD would replace PRIA three years and 90 days after the rule is published. Under PRIA, air carriers, operators, and pilots complete and mail, fax, or email

forms to authorize requests for the provision of pilots' records. Under the PRD, most of this process will occur electronically. Over a 10-year period of analysis (2021–2030), the rule provides present value cost savings to industry of about \$21.2 million or \$3.0 million annualized using a seven percent discount rate. Using a three percent discount rate, the present value cost savings to industry is about \$27.4 million or about \$3.2 million annualized. After the discontinuance of PRIA, the annual recurring cost savings will more than offset the recurring annual costs of the rule.

The following table summarizes the benefits, costs, and cost savings of the rule to industry and the FAA.

TABLE 2—SUMMARY OF BENEFITS, COSTS, AND COST SAVINGS

Benefits	
• Promotes aviation safety by facilitating operators' consideration of pilot skill and performance when making hiring and personnel management decisions.	
• Provides faster retrieval of pilot records compared to PRIA.	
• Reduces inaccurate information and interpretation compared to PRIA.	
• Provides easier storage of and access to pilot records than PRIA.	
• Allows pilots to consent to release and review of records.	

Summary of costs and cost savings\* (\$millions)

Category	10-Year present value (7%)	Annualized (7%)	10-Year present value (3%)	Annualized (3%)
Costs .....	88.2	12.6	98.5	11.5
Cost Savings .....	(21.2)	(3.0)	(27.4)	(3.2)
Net Costs .....	67.0	9.5	71.0	8.3

\* **Table Notes:** Columns may not sum due to rounding. Savings are shown in parentheses to distinguish from costs. Estimates are provided at seven and three percent discount rates per Office of Management and Budget (OMB) guidance. Industry and FAA costs are higher in the beginning of the period of analysis than industry cost savings that occur later in the period of analysis after the discontinuance of PRIA three years and 90 days after the rule is published. This results in larger annualized estimates of costs and net costs at a seven percent discount rate compared to a three percent discount rate.

**II. Authority for This Rulemaking**

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). This rulemaking is promulgated under the general authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules, and the specific authority provided by section 203 of the Airline Safety and Federal Aviation Administration Extension Act of 2010,

herein called the PRD Act,<sup>4</sup> codified at 49 U.S.C. 44703(h)–(k). The PRD Act identifies several rulemaking requirements.

The PRD Act requires the Administrator to promulgate regulations to establish an electronic pilot records database containing records from the FAA and records maintained by air carriers and other persons that employ pilots. At a minimum, air carriers and persons employing pilots must report

“records that are generated by the air carrier or other person after [August 1, 2010]” as well as “records that the air carrier or other person [was] maintaining, on [August 1, 2010],” on any person employed as a pilot. The PRD Act also requires air carriers to access the database and evaluate any relevant records maintained therein pertaining to an individual before allowing that individual to begin service as a pilot.

The FAA is further required to issue regulations to protect and secure the personal privacy of any individual

<sup>4</sup> Public Law 111–216, 124 Stat. 2348 (Aug. 1, 2010).

whose records are accessed in the new electronic database; to protect and secure the confidentiality of those records; and, to prevent further dissemination of those records once accessed by an air carrier. The PRD Act also requires the implementing regulations to prescribe a timetable for the implementation of the PRD as well as a schedule for expiration of the application of the Pilot Records Improvement Act of 1996.

### III. Background

#### A. Statement of the Problem

The Pilot Records Improvement Act (PRIA) was enacted in 1997 in response to a series of accidents attributed to pilot error.<sup>5</sup> The National Transportation Safety Board (NTSB) found that although the pilots had a history of poor training performance or other indicators of impaired judgment, their employers had not investigated the pilots' backgrounds.

Two accidents following the enactment and implementation of PRIA led the NTSB to make additional findings and recommendations regarding retention of pilot records; the sharing of information related to pilot performance among operators; and operators' review of previous performance records. On July 13, 2003, Air Sunshine Incorporated flight 527 (d/b/a Tropical Aviation Services, Inc.) ditched in the Atlantic Ocean about 7 nautical miles west-northwest of Treasure Cay Airport (MYAT), The Bahamas, after an in-flight failure of the right engine. The flight was conducted under the operating rule of 14 CFR part 135, as a scheduled international, passenger-commuter flight. Out of nine total passengers, two passengers died after evacuating the airplane and five passengers sustained minor injuries. The pilot sustained minor injuries and the airplane sustained substantial damage. The NTSB determined that "the probable cause of the accident was the in-flight failure of the right engine and the pilot's failure to adequately manage the airplane's performance after

the engine failed."<sup>6</sup> The NTSB also found that "the pilot had a history of below-average flight proficiency, including numerous failed flight tests, before the flight accident, which contributed to his inability to maintain maximum flight performance and reach land after the right engine failed."<sup>7</sup>

In response to the Air Sunshine 527 accident, the NTSB issued recommendation A-05-01, in which it advised the FAA to require all "part 121 and 135 air carriers to obtain any notices of disapproval for flight checks for certificates and ratings for all pilot-applicants and evaluate this information before making a hiring decision."<sup>8</sup> The NTSB recognized the importance of validating FAA ratings and certifications, as required by PRIA, but noted that "additional data contained in FAA records, including records of flight check failures and rechecks, would be beneficial for a potential employer to review and evaluate." The NTSB acknowledged that while "a single notice of disapproval for a flight check, along with an otherwise successful record of performance, should not adversely affect a hiring decision," a history of "multiple notices of disapproval for a flight check might be significant . . . and should be evaluated before a hiring decision is made."

On February 12, 2009, Colgan Air, Inc. flight 3407 (d/b/a Continental Connection), crashed into a residence in Clarence Center, New York, about 5 nautical miles northeast of the Buffalo Niagara International Airport, New York, resulting in the death of all 49 passengers on board and one person on the ground. The flight occurred under 14 CFR part 121.

The NTSB determined that "the probable cause of this accident was the captain's inappropriate response to activation of the stick shaker, which led to an aerodynamic stall from which the airplane did not recover."<sup>9</sup> Contributing factors included: "(1) the flightcrew's failure to monitor airspeed in relation to the rising position of the low-speed cue, (2) the flightcrew's failure to adhere to sterile cockpit procedures, (3) the captain's failure to effectively manage the flight, and (4) Colgan Air's inadequate procedures for airspeed

selection and management during approaches in icing conditions."<sup>10</sup>

Additional safety issues the NTSB identified included deficiencies in the air carrier's recordkeeping system and its analysis of the flightcrew's qualifications and previous performance. Specifically, Colgan Air's check airman stated that the captain had failed his initial proficiency check on the Saab 340 on October 15, 2007, received additional training, and passed his upgrade proficiency check on the next day; however, the company's electronic records indicated that the second check was conducted 12 days after the failure. The NTSB deemed these discrepancies in the captain's training records as noteworthy because the captain had demonstrated previous training difficulties during his tenure at Colgan Air.<sup>11</sup> In addition to this failed check, the captain failed his practical tests for the instrument rating (airplane category) on October 1, 1991 and for the commercial pilot certificate (single-engine land airplane) on May 14, 2002, and required additional training in three separate training events while a first officer at Colgan.

As a result of its investigation, the NTSB issued recommendation A-10-019 to recommend that the FAA require all "part 121, 135, and 91K operators to provide the training records requested in Safety Recommendation A-10-17 to hiring employers to fulfill their requirement under PRIA."<sup>12</sup> Safety Recommendation A-10-017 advises the FAA to require all "part 121, 135, and 91K operators to document and retain electronic and/or paper records of pilot training and checking events in sufficient detail so that the carrier and its principal operations inspector can fully assess a pilot's entire training performance."<sup>13</sup>

In the Colgan Air 3407 final aircraft accident report, the NTSB noted the issuance of Safety Recommendation A-05-01 as a result of the Air Sunshine 527 accident. The NTSB indicated its

<sup>5</sup> Clarifications to Pilot Records Improvement Act of 1996, H.R. Rep. 105-372 (Oct. 31, 1997), explained certain clarifying amendments made to PRIA in Public Law 105-142, 111 Stat. 2650 (Dec. 5, 1997), and listed the following accidents as evidence supporting the enactment of PRIA: Continental Airlines flight 1713 (November 15, 1987); Trans-Colorado flight 2286 (January 19, 1988); AV Air flight 3378 (February 19, 1988); Aloha Island Air flight 1712 (October 28, 1989); Scenic Air flight 22 (April 22, 1992); Express II flight 5719 (December 1, 1993); and American Eagle flight 3379 (December 13, 1994). Each of these operators held a part 119 air carrier certificate and most of the flights occurred under 14 CFR part 135, except Continental Airlines flight 1713, which was operated under 14 CFR part 121.

<sup>6</sup> See NTSB Report AAR-04/03 (Adopted October 13, 2004) at page 47, which can be obtained at <http://www.ntsb.gov/investigations/AccidentReports/Reports/AAR0403.pdf>.

<sup>7</sup> See NTSB Report AAR-04/03 at page 43.

<sup>8</sup> Letter to Marion C. Blakey Re Safety Recommendation A-05-01 and -02 (Jan. 27, 2005), available at [http://www.ntsb.gov/safety/safety-recs/RecLetters/A05\\_01\\_02.pdf](http://www.ntsb.gov/safety/safety-recs/RecLetters/A05_01_02.pdf).

<sup>9</sup> NTSB Report AAR-10/01 at 155 (Feb. 2, 2010), available at <http://www.ntsb.gov/investigations/AccidentReports/Reports/AAR1001.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> NTSB Safety Recommendation A-10-019 in Letter from NTSB Chairman Deborah A.P. Hersman to FAA Administrator J. Randolph Babbitt dated Feb. 23, 2010 at 26, available at <https://www.ntsb.gov/safety/safety-recs/reclatters/A-10-010-034.pdf>.

<sup>13</sup> NTSB Safety Recommendation A-10-017 in Letter from NTSB Chairman Deborah A.P. Hersman to FAA Administrator J. Randolph Babbitt dated Feb. 23, 2010 at 57, available at <https://www.ntsb.gov/safety/safety-recs/reclatters/A-10-010-034.pdf>. By letter dated February 21, 2014, the NTSB reported that "pending implementation of the PRD, including guidance about when comments are needed in PRD entries, Safety Recommendation A-10-017 remains classified Open-Acceptable Response."

continued recommendation that airman certification information concerning previous notices of disapproval should be included in an air carrier's assessment of the suitability of a pilot-applicant. The NTSB also indicated that notices of disapproval should be considered safety-related records that must be included in an air carrier's evaluation of a pilot's career progression. While recognizing that the FAA had revised *Advisory Circular (AC) 120-68G: The Pilot Records Improvement Act of 1996 (AC120-68G)*, (June 21, 2016) to indicate that the hiring employer may, at its discretion, request a record of an individual's notices of disapproval for flight checks from the FAA,<sup>14</sup> the NTSB advised that a rulemaking would ensure that air carriers are required to obtain and evaluate notices of disapprovals for pilot-applicants.

Following the Colgan Air 3407 accident, Congress enacted the PRD Act. The PRD Act required the FAA to establish an electronic pilot records database and provided for the subsequent sunset of PRIA. Congress has since enacted the FAA Extension, Safety, and Security Act of 2016 (FESSA), which required the FAA to establish the electronic pilot records database by April 30, 2017.<sup>15</sup>

On February 23, 2019, Atlas Air Inc. (Atlas) flight 3591, a Boeing 767, was destroyed after it descended rapidly from an altitude of about 6,000 ft mean sea level (MSL) and crashed in Trinity Bay, Texas, about 41 miles east-southeast of George Bush Intercontinental/Houston Airport (IAH), Houston, Texas, resulting in the death of the captain, first officer, and a nonrevenue pilot riding in the jump seat. Atlas operated the airplane as a part 121 domestic cargo flight.

The NTSB determined that the probable cause of this accident was an inappropriate response by the first officer as the pilot flying to an inadvertent activation of the go-around mode, which led to his spatial disorientation and nose-down control inputs that placed the airplane in a steep descent from which the crew did not recover. Contributing to the accident, according to the NTSB, were systemic deficiencies in the aviation industry's selection and performance measurement practices, which failed to address the first officer's aptitude-related deficiencies and maladaptive

stress response. The NTSB also noted the FAA's failure to implement the PRD as a contributing factor.

Consequently, the NTSB issued two new safety recommendations. Recommendation A-20-34 states:

Implement the pilot records database and ensure that it includes all industry records for all training started by a pilot as part of the employment process for any Title 14 Code of Federal Regulations Part 119 certificate holder, air tour operator, fractional ownership program, corporate flight department, or governmental entity conducting public aircraft operations regardless of the pilot's employment status and whether the training was completed.

Recommendation A-20-35 states:

Ensure that industry records maintained in the pilot records database are searchable by a pilot's certificate number to enable a hiring operator to obtain all background records for a pilot reported by all previous employers.

On March 30, 2020, the FAA responded to the legislative mandates and NTSB recommendations by publishing the PRD Notice of Proposed Rulemaking (NPRM) in the **Federal Register**.<sup>16</sup> Consistent with NTSB recommendation A-05-01, the FAA proposed to require all operators to access and evaluate an individual's records in the PRD before making a hiring decision. These records would include any notices of disapproval the individual received during a practical test attempt for a certificate or rating. The proposed rule stated the FAA would upload data processed in the Certification Airmen Information System (CAIS) on a nightly basis to ensure both air carriers and operators have the most accurate and up-to-date information to make an informed hiring decision. Second, consistent with A-10-17 and A-10-19, the FAA proposed to require air carriers and operators to enter relevant information into the PRD in a standardized format.

Implementation of this rule is responsive to both new NTSB recommendations. Specifically, regarding Recommendation A-20-34, the FAA only has authority to require reporting of records by operators that have actually employed the pilot; however, the PRD will apply to records concerning training prior to the pilot beginning service as a pilot crewmember.

#### B. History of PRIA and PRD

Congress enacted PRIA to ensure that air carriers adequately investigate each pilot's employment background and other information pertaining to pilot performance before allowing that

individual to serve as a flight crewmember in air carrier operations. PRIA requires a hiring air carrier to obtain records from three sources utilizing standardized forms including: (1) Current and previous air carriers or operators that had employed the individual as a pilot, (2) the FAA, and (3) the National Driver Register (NDR).

The provisions of PRIA were self-implementing and the FAA's role was limited; therefore, there was no need for the FAA to develop implementing regulations. The FAA issued AC120-68G, which provided guidance for air carriers, operators and pilots regarding compliance with the PRIA statute. In advance of this rulemaking, the FAA moved its PRIA records to an electronic pilot record database, the first phase of PRD.<sup>17</sup> Use of the PRD for review of FAA records is voluntary under PRIA.

Following the Colgan Air 3407 accident, the FAA issued a Call to Action on Airline Safety and Pilot Training. The FAA published an Airline Safety and Pilot Training Action Plan<sup>18</sup> that included a number of key initiatives including a focused review of air carrier flight crewmember training, qualification, and management practices. In addition, the FAA updated AC 120-68E<sup>19</sup> on July 2, 2010, and incorporated elements from the Plan.

In response to the PRD Act, the FAA Administrator chartered the PRD Aviation Rulemaking Committee (ARC) on February 3, 2011.<sup>20</sup> The PRD ARC submitted a final report to the Associate Administrator for Aviation Safety on July 29, 2011. A copy of the report is in the public docket for this rulemaking.<sup>21</sup>

The FAA also issued further communications regarding pilot records. The FAA published an Information for Operators (InFO)<sup>22</sup> on August 15, 2011 (InFO 11014), advising all operators that conduct operations in accordance with

<sup>17</sup> The FAA was appropriated "under section 106(k)(1) of the PRD Act and codified at U.S.C. 44703(i)(14), a total of \$6,000,000 for fiscal years 2010 through 2013" in order to establish a pilot records database.

<sup>18</sup> Fact Sheet—Update on the FAA's Call to Action to Enhance Airline Safety (Jan. 27, 2010), available at [https://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=11125](https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=11125).

<sup>19</sup> Advisory Circular—Pilot Records Improvement Act of 1996 (July 2, 2010), available at [https://www.faa.gov/documentLibrary/media/Advisory\\_Circular/AC%20120-68E.pdf](https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%20120-68E.pdf).

<sup>20</sup> The PRD ARC charter is available at [http://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/media/PRD.ARC.cht.20110203.pdf](http://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/PRD.ARC.cht.20110203.pdf).

<sup>21</sup> The ARC report is available in the public docket for this rulemaking and is also available at [https://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/index.cfm/document/information?documentID=312](https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/document/information?documentID=312).

<sup>22</sup> InFOs are documents the FAA issues that contain information and recommendations.

<sup>14</sup> Advisory Circular—Pilot Records Improvement Act of 1996 (June 21, 2016), available at [https://www.faa.gov/documentLibrary/media/Advisory\\_Circular/AC\\_120-68G.pdf](https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_120-68G.pdf).

<sup>15</sup> Public Law 114-190 section 2101 (July 15, 2016).

<sup>16</sup> 85 FR 17660.

parts 91, 121, 125, and 135 to retain any records on pilots employed in those operations.<sup>23</sup> The FAA published a second InFO on March 13, 2014 (InFO 14005), further reminding the regulated entities of their responsibility to retain pilot records dating back to August 1, 2005.<sup>24</sup> The FAA also issued a policy notice titled “Pilot Records Retention Responsibilities Related to the Airline Safety and Federal Aviation Administration Act of 2010.” The notice directed FAA inspectors to verify that air carriers or operators have a system in place to retain records that the statute requires such entities to include in the database.<sup>25</sup>

The PRD Act directed the FAA to submit a statement to Congress by February 2012, and at least once every three years thereafter, indicating completion of a periodic review of the statutory requirements. The statement to Congress must contain FAA recommendations to change the records required to be included in the database or explain why the FAA does not recommend changes to the records referenced in Section 203. In its most recent report to Congress, in February 2018, the FAA indicated that it did not recommend any changes until it considers public comments on the PRD rulemaking proposal. The FAA expects to provide the next report by February 2021.

#### IV. Comments Regarding General Issues, Applicability, Pilot Privacy, and the Transition From PRIA

The Pilot Records Database NPRM published on March 30, 2020 and the comment period closed June 29, 2020. Approximately 800 comments were posted to the docket, many of which were form letters submitted by National Business Aviation Association (NBAA) members.

Generally, the Families of Continental Flight 3407<sup>26</sup> and others supported the rule. Many commenters, particularly

<sup>23</sup> [http://www.faa.gov/other\\_visit/aviation\\_industry/airline\\_operators/airline\\_safety/info/all\\_infos/media/2011/InFO11014.pdf](http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/media/2011/InFO11014.pdf).

<sup>24</sup> Pilot Records Database—Status Update [http://www.faa.gov/other\\_visit/aviation\\_industry/airline\\_operators/airline\\_safety/info/all\\_infos/media/2014/InFO14005.pdf](http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/media/2014/InFO14005.pdf).

<sup>25</sup> National policy notice N8900.279, “Pilot Records Retention Responsibilities Related to the Airline Safety and Federal Aviation Administration Act of 2010,” is available at [http://www.faa.gov/documentLibrary/media/Notice/N\\_8900.279.pdf](http://www.faa.gov/documentLibrary/media/Notice/N_8900.279.pdf). See also 49 U.S.C. 44703(i)(4)(B)(ii)(II).

<sup>26</sup> The Families of Continental Flight 3407 is an organization of family members and close friends of the victims of Continental Flight 3407 which crashed on February 12, 2009. This rule refers to that event as Colgan Air 3407.

part 91 operators<sup>27</sup> and aviation industry organizations, opposed the proposed rule. Commenters stated that not all covered records should apply to some types of operators, such as corporate operators and operators conducting public aircraft operations (PAO). They asserted that requiring such operators to include all record types would cause undue burden and would offer limited value, as the career path from part 91 operations to operations involving common carriage is less common. Commenters were also concerned about the user fee, particularly as it applied to small operators, and noted that they anticipated higher costs for recordkeeping than the estimated costs presented by the FAA. Commenters also requested a longer compliance period to transition from PRIA to PRD.

Commenters expressed concern about pilots’ privacy and objected to the inclusion of check pilot comments in the PRD. Commenters further objected to the inclusion of historical records and the method for record reporting.

#### A. General Support or Opposition

##### 1. Summary of Comments

Most comments that generally agreed with the proposed rule were submitted by the Families of Continental Flight 3407. These commenters supported the creation of the PRD on the grounds that it would prevent accidents such as crash of Colgan Flight 3407. Most of these commenters stated the crash was largely due to pilot error and that the PRD would have provided better review and scrutiny of pilot records, which could have prevented the accident.

The other commenters that generally supported the proposed rule, including the NTSB, the Regional Airline Association (RAA), Small UAV Coalition, and the National Air Disaster Foundation, did so on the basis that centralizing records in an electronic database would create a broad source of records available in a standardized format in one location. This centralization would limit the possibility that operators would overlook records, provide a seamless process of reviewing pilot records, aid operators in hiring the highest quality pilots, and improve transparency while still protecting the privacy of pilots’ records. One individual stated the proposed rule has some positive aspects for part 135 operators, especially in obtaining timely PRIA documents about a prospective crewmember’s

<sup>27</sup> The term “part 91 operators” refers to operations that occur solely under the regulatory requirements contained in 14 CFR part 91.

employment history, but believed the costs outweigh the benefits. This commenter indicated complying with the proposed rule would require hiring additional personnel.

Commenters who generally disagreed with the proposed rule stated the PRD would not be useful, would impose an unfair burden on affected operators or pilots or would be intrusive and violate pilot privacy. Commenters also stated that the PRD would be open to abuse and false reporting by employers, or would penalize pilots unfairly who do not train well or do not perform well in the culture of a particular airline. Others, including a flight department leader, stated the provisions are unnecessary because airline and charter organizations can change their internal hiring processes to assess the candidate without needing to leverage a standardized process for review of records. The FL Aviation Corp. and another individual commented that the NPRM provided no data concerning accidents or incidents that justify the change to the PRD or the requirements for inclusion of additional records and recordkeeping. The Coalition of Airline Pilots Associations (CAPA) urged the FAA to establish protocols to prevent U.S. candidates from being placed at a hiring disadvantage when competing for jobs among foreign applicants whose training data may be unverifiable.

Three commenters, including NBAA and CAPA, expressed concern that the proposed rule differs significantly from the consensus recommendations of the 2011 PRD Aviation Rulemaking Committee (ARC). CAPA recommended the FAA reconsider the ARC’s recommendations, in addition to reviewing the public comments.

##### 2. FAA Response

The FAA carefully reviewed all comments received in response to the NPRM and made several changes to the rule to ensure that it achieves the safety goals of the FAA and fully implements the statutory requirements set forth by Congress. As noted in the NPRM, industry, including part 91 operators, currently is subject to the requirements of PRIA. Although the implementation of the PRD changes the nature of industry participation in record-sharing, issues such as pilot privacy, abuse, false reporting, and penalization of pilots who do not perform well exist under PRIA, as well. In enacting the PRD Act, Congress directed the FAA to include safeguards in the PRD for pilot privacy and related concerns. The FAA discussed these proposed safeguards in the NPRM and adopts them, as appropriate, in this final rule.

The FAA carefully considered the input provided by the ARC. The FAA has already adopted many of its recommendations in the design and implementation of the PRD. While the FAA does not currently plan to implement all recommendations as described in the report, the ARC assisted the FAA in formulating the design of the PRD. This design is the result of careful consideration of the requirements, as outlined in the statute, the FAA's operational capabilities, and the effects on and benefits to industry.

The FAA is mindful of all comments concerning costs of compliance with this rule. The Regulatory Impact Assessment (RIA), which is available in the docket for this rulemaking, accounts for all costs incurred by entities. Section VI.A of this rule also includes a discussion of the costs.

### *B. Applicability of the Rule*

As discussed further in Section V.A.1., under the NPRM, part 111 applies to operators and would require them to report information to the FAA for inclusion in the PRD. Specifically, the FAA proposed to include pilot records from certain operations occurring under part 91, such as public aircraft operations, air tour operators operating in accordance with § 91.147, and corporate flight departments.

The FAA received comments related to the applicability of the proposed rule from the General Aviation Manufacturers Association (GAMA), the Aircraft Owners and Pilots Association (AOPA), NBAA, the U.S. Marshals Service Justice Prisoner and Alien Transportation System (JPATS), NASA's Aircraft Management Division, PlaneSense, Inc., Dassault Aviation, and several individual commenters, approximately 500 of whom were using a form letter provided by NBAA. Many commenters and the majority of individuals opposed applying the proposed requirements to part 91 operators. Some commenters, including NASA's Aircraft Management Division and JPATS, opposed the application of the proposed rule to PAO.

#### 1. Comments Received on the Inclusion and Definition of Corporate Flight Departments and Other Part 91 Operators

GAMA, NTSB, NBAA, AOPA, Koch Industries, operators, and individual commenters addressed the proposal to require all corporate flight departments to enter data on pilot performance into the PRD. Many of these commenters indicated that the proposal would impose unreasonably burdensome recordkeeping requirements on

corporate flight departments, which ultimately would benefit operators but would not increase the safety of corporate flight department operations. Several commenters asserted that Congress did not intend to impose these requirements on corporate flight departments and the proposal was FAA overreach. Many commenters noted that their corporate flight departments are small operations; as a result, some suggested they would need to add staff and modify their information technology systems to comply with the proposed requirements.

Several commenters objected to the definition of "corporate flight departments" in the NPRM, arguing that the FAA is creating a new category of operator, and that this is inconsistent with established categories of operations under parts 91, 121, and 135. GAMA, NBAA and its form letter campaign, AOPA, and the PlaneSense form letter campaign asserted that no basis exists in the PRD Act to establish such a definition and that it would add complexity and confusion. GAMA noted the proposed definition would require aircraft operators to first determine their status based on the definition and then add the new burden and cost of compiling, maintaining, and reporting pilot records. GAMA expressed concern that the proposed rule would expose operators to the possibility of enforcement action in the event the FAA disagrees with an operator's interpretation of the rule and the operator's subsequent actions.

GAMA, AOPA, and individual commenters asserted that the FAA assumes erroneously that part 91 corporate aviation commonly serves as a "pipeline" or "gateway" to employment with part 121 and part 135 operators. GAMA stated that studies show corporate flight departments are not gateway employers like flight schools with bridge agreements, operators under parts 91 subpart K and 135, and the U.S. military. Instead, GAMA stated that the most common path to part 121 air carrier employment starts at a flight school. GAMA identified the primary sources of airline hiring as part 141 and part 61 flight schools with bridge agreements, parts 135 and part 91(k) operators, and the U.S. military.<sup>28</sup> CAPA stated those gateway jobs are ever-changing and that although it is not unreasonable to require a certificate holder to keep pilot

<sup>28</sup>James Higgins, et al., "An Investigation of the United States Pilot Labor Supply," University of North Dakota (2013); and Michael McGee, "Air Transport Pilot Supply and Demand—Current State and Effects of Recent Legislation," The RAND Corporation (2015).

records, trying to take this snapshot in time of what might be a gateway job could lead to future loopholes.

NBAA stated that business aviation represents a diverse group of aircraft operators ranging from single-pilot, owner-operated single aircraft to multi-aircraft operators with a mix of fixed-wing and rotor-wing aircraft. Therefore, according to NBAA, a single, codified definition will not adequately address the diversity of the industry. NBAA recommended the FAA remove any provisions that impose additional recordkeeping requirements that would apply to corporate flight departments and § 91.147 operators, as recommended by the ARC. NBAA also objected to the FAA basing the definition of corporate flight departments on the number of aircraft a department operates, as doing so could deter operators from purchasing aircraft.

NBAA urged the FAA to limit the scope of the proposed rule to operators with the most significant public interest, such as those that conduct common carriage, and to facilitate the continued use of PRIA feedback for part 91 operators. NBAA noted its member survey data suggests that, on average, part 91 operators within FAA's proposed definition of a corporate flight department receive less than one PRIA request every two-and-a-half years.

NBAA and other commenters stated that part 91 business operators—particularly those the FAA proposed to include in part 111—have excellent safety records, and the FAA's proposal and regulatory evaluation fail to articulate any quantifiable safety value for subjecting part 91 operators to the requirements of the proposed rule. NBAA further stated that NBAA members, such as certificate holders operating under part 135, are already subject to PRIA requirements and report that PRIA results play a greater role in validating existing pilot hiring decisions than in considering whom to hire. NBAA also pointed out that including certain part 91 operators exceeds the NTSB's recommendation, which only cites the need for parts 121 and 135 operators to share pilot information. NBAA recommended the FAA remove part 91 operators from the proposed rule, on the view that records provided by part 91 operators would provide minimal safety benefit to part 121 and part 135 operators in their hiring process.

An individual asserted that while InFO 11014<sup>29</sup> refers to part 91, 121 and

<sup>29</sup>InFO 11014, described in Section III.B., published on August 11, 2015 and provided



135 records, the regulations cited are for parts 121, 125, and 135 only. The commenter stated no regulation requires part 91 operators to maintain records other than to show proficiency. The commenter further stated the InFO does not address part 91 record retention.

Other commenters stated that the FAA does not have statutory authority to impose the proposed recordkeeping requirements on part 91 operators. PlaneSense and the commenters that submitted comments as part of the PlaneSense form letter campaign (the PlaneSense commenters) asserted that the PRD Act identifies air carriers and “other persons” as having obligations under the Act, but specifically identifies the applicable pilot records to which the PRD Act applies as those kept pursuant to part 121, part 125, or part 135. Citing 49 U.S.C. 44703(h) and 44703(i), these commenters argued that the PRD Act does not include pilot records of operators whose flights are operated under part 91 or subpart k of part 91. The PlaneSense commenters also contended that no statutory authority exists in either section 44703(h) or 44703(i) that imposes an obligation on any operator conducting operations under part 91. They asserted that the FAA is overstepping its authority by interpreting the definition of “person” in the PRD Act to include noncommercial operators that the statute does not identify specifically. These commenters urged the FAA to remove references to fractional operators and corporate flight departments from the rule.

An air tour operator opined that the proposal would burden part 91 operators far beyond the intent of Congress by requiring frequent reporting by that group. Several commenters noted that corporate flight departments vary widely in the volume and nature of records retained. GAMA and other commenters suggested that the proposal would discourage corporate flight departments from creating and retaining records not otherwise mandated by regulation and may also discourage participation in voluntary safety programs and optional formal training. One individual suggested that while Congress and the FAA included indemnity clauses, they are not robust enough to prevent civil defamation actions.

Dassault Aviation asked the FAA to confirm that the proposed requirements for corporate flight departments are not applicable to original equipment manufacturer (OEM) demonstration and

information about future PRD compliance to air carriers and operators.

OEM production or experimental flight departments because they do not operate “a fleet of two or more standard airworthiness airplanes.”

In the preamble to the proposed rule, the FAA asked commenters to respond to three questions regarding corporate flight departments’ safety practices.<sup>30</sup> GAMA and four individual commenters provided responses. These commenters generally agreed it would not be beneficial to require corporate flight departments operating a single aircraft to report to the PRD because, in the case of owners operating their own aircraft, they would be reporting on themselves. GAMA asserted the Agency failed to “adequately address the scope of operations conducted under part 91, especially by owner-operators who use their aircraft for a variety of purposes and will likely never employ pilots.” An individual commenter noted it would be impossible for corporate flight departments operating a single aircraft to comply with the proposed requirements because every private aircraft owner would have to report on every pilot they employ or contract with regardless of how short the term. Another individual asked how the FAA would know all corporate flight departments are reporting to the PRD, as required.

In response to questions about the records corporate flight departments maintain, GAMA indicated many large corporate flight departments maintain records documenting pilot training, evaluation, performance, disciplinary actions, or release from employment or other professional disqualification. GAMA also noted that pilots of many corporate flight departments have responsibilities in addition to operating aircraft, so employment records may also contain much information that is not relevant to performance as a pilot and the pilot-related data is likely to exist in a form that differs from the record elements the PRD intends to include.

JPATS, NASA’s Aircraft Management Division, and individuals opposed the application of the proposed rule to PAO. Noting that the proposed rule would not apply to “[a]ny branch of the United States Armed Forces, National Guard, or reserve component of the Armed Forces,” JPATS said that Federal flight

<sup>30</sup> 85 FR at 17671 (requesting answers to whether it would be beneficial to require corporate flight departments operating a single aircraft to report to PRD; whether such flight departments already maintain substantive records that include certain types of information; and whether the proposed rule would create a disincentive for such departments to create and retain records not already required).

departments should be treated the same, unless the department maintains an FAA certificate, such as an air carrier or commercial operating certificate. NASA opposed placing pilot record reporting requirements on Federal Government PAO. Individual commenters also recommended the FAA exempt PAO from the proposed rule. One such commenter stated the proposed rule does not consider that pilots from the Department of Justice (FBI, DEA, U.S. Marshals) and the Department of Homeland Security (Air and Marine Operations, United States Coast Guard) can be targeted for retaliation for performing their duties.

In contrast to the comments discussed above, NTSB and an individual commenter expressed support for the inclusion of part 91 operators in the proposed rule. The individual commenter said that, as an employer of pilots for part 135 operations, it finds the current process to be flawed and time-consuming with respect to obtaining records from part 91 operators. The NTSB agreed that part 91 operators often serve as “gateway operators” for air carrier pilots.

## 2. FAA Response

The FAA carefully evaluated all comments received regarding the applicability of each proposed requirement. Upon consideration, the FAA determined that in light of the information and data provided by commenters, some requirements of the proposed rule were overly burdensome for certain types of operators. This rule reduces the reporting burden for certain operators conducting operations without a part 119 certificate, in that they are not required to report specific types of records unless and until requested. Such operators include public aircraft operations, air tour operations, and corporate flight departments, referred to in this section as the “PAC” group. This approach addresses many of the issues raised by commenters with respect to the burden on part 91 operators. Under the final rule, a reviewing entity will have access to a pilot’s records as needed, but that the reporting requirement for the PAC group scales according to the volume of requests.

Commenters stated that many pilots employed by PAC operators do not switch employers often and NBAA noted that some operators only receive a single PRIA request every two-and-a-half years. Accordingly, the FAA determined the most effective way to ensure review of a pilot’s records by a potential employer, while reducing extraneous records loaded by the PAC



group, is to require that group to enter only records that may be of particular concern to a hiring employer. Section V.C.4 of this rule contains a detailed discussion of this new method of reporting. This rule requires these PAC operators to enter certain records contemporaneous with the occurrence of a particular event or receipt of a record; this framework will reduce risk associated with a pilot error or omission with respect to that pilot's employment history. Section V.D.3 provides a description of this requirement. This rule will require the PAC operators to report all other records unless and until requested, with the exception of an air tour operator's drug and alcohol testing records.<sup>31</sup>

The FAA is mindful of the comments recommending exclusion of public aircraft operations from the PRD. The FAA, however, does not have discretion to completely exclude this group from the PRD requirements. The PRD Act requires the inclusion of records from "other person[s] [. . .] that ha[ve] employed an individual as a pilot of a civil or public aircraft."<sup>32</sup> The FAA notes that the PRD Act specifically excludes records from the branches of the "Armed Forces, the National Guard, or a reserve component of the Armed Forces,"<sup>33</sup> which would be public aircraft operations under 49 U.S.C. 40102. The exclusion of records from this narrow group of public aircraft operators, combined with the statutory language generally including individuals who are employed as pilots of public aircraft, indicates that the statute includes other (non-statutorily excluded) entities that conduct public aircraft operations.

Permitting the PAC group to report certain records only upon request is consistent with the FAA's framework for risk-based decision-making. Operators under part 119 are subject to robust requirements, concomitant with assuring the safety of the traveling public; in contrast, operators in the PAC group conduct operations that are subject to less FAA oversight and generally present a lower level of risk, due to reduced volume and frequency. The FAA anticipates a modest number of pilots will transition from the PAC group to reviewing entities. Given the considerations noted above, this method of reporting-upon-request available for PAC entities is consistent with the PRD Act and is scalable with the level of risk

of these types of operations. These operators currently respond to requests under PRIA. Excluding these operators from the applicability of the PRD entirely would not serve the FAA's safety mission; overall, this final rule requires an appropriate level of engagement from certain part 91 operators.

The FAA also received many comments concerning the proposed definition of corporate flight department. The FAA proposed to define corporate flight departments as operators conducting operations under part 91 with two or more standard airworthiness airplanes that require a type rating under § 61.31(a), in furtherance of, or incidental to, a business, or operators holding a letter of deviation authority under § 125.3. This rule removes the proposed definition from § 111.10 but instead includes the criteria in the applicability section of the rule. The criteria are also amended to include rotorcraft, which is described in detail in Section V.A.1. The FAA selected two aircraft because operators utilizing multiple aircraft tend to have more pilots, as described in the NPRM. Additionally, this rule will not require single-aircraft corporate flight departments conducting operations exclusively under part 91 to upload records to the PRD because, as mentioned by commenters, such operators often include only the single pilot conducting operations on behalf of the operator, who may be the same person. Setting the threshold at multiple aircraft better tailors this rule to apply to entities that may have applicable records.

In response to comments regarding whether an OEM's operations fall within the definition of a corporate flight department, the FAA reiterates that if the operations fall into the applicability criteria as adopted, part 111 would apply to that entity. Each manufacturer should remain aware of the applicability criteria and assess whether it meets the criteria for applicability.

### 3. Comments Regarding Other Types of Operators

Commenters also provided input concerning other types of entities, such as pilot schools and operators that are excluded from the applicability of part 119. Several commenters, including Koch Industries, CAE, and CAPA, asked why part 141 and part 142 schools are not required to report, and suggested that those entities should provide data instead of operators.

CAPA also stated that applicability should extend to the U.S. military. RAA

supported gathering data from part 133 and part 137 operations, while the National Agricultural Aviation Association (NAAA) agreed with FAA's decision not to require reporting from part 137 agricultural operators. NAAA stated that part 137 operators are not "gateway operators" for air carriers.

Commenters also responded to the FAA's request for comment regarding whether data from excluded entities would provide information relevant to the evaluation of a pilot candidate for employment. Airlines for America (A4A) stated it does not believe data from excluded entities would provide information relevant to the evaluation of a pilot candidate seeking employment. A4A recommended that the FAA focus on ensuring the PRD is successful by providing technical requirements and engaging with regulated entities before expanding the PRD to other entities. Ameristar Air Cargo, Inc. (Ameristar) asserted it would be unlikely that PRIA requests will be honored by foreign carriers without a treaty or bilateral agreement with ICAO member countries.

The Small UAV Coalition commented that the proposed rule is another regulation that applies to UAS air carriers only because a more suitable regulatory scheme addressing such operations does not exist. The Coalition stated that a set of comprehensive laws and regulations specific to UAS operations would help resolve the regulatory compliance burden that UAS operators face when seeking to conduct commercial business under existing regulatory schemes. The Coalition did not suggest that the overarching safety purposes of the PRD are inapplicable to commercial UAS operations, but stated that commercial UAS operations merit a realistic and tailored approach to record retention and review that is an integral part of a comprehensive rule on UAS air carriers. The Coalition urged the FAA to begin rulemaking to update air carrier operating rules for UAS air carriers.

### 4. FAA Response

The plain language of the statute only permits the FAA to require employers of pilots to report records. The Armed Forces are excluded by the plain language of the statute.<sup>34</sup> Similarly, training centers subject to 14 CFR part 141 or part 142 training centers would not be able to report records regarding pilots who received training at those centers, as individuals employed as flight instructors to provide flight

<sup>31</sup> Operators subject to 14 CFR part 120 must enter all drug and alcohol records into the database in accordance with the timelines and requirements included in § 111.220.

<sup>32</sup> 49 U.S.C. 44703(i)(2)(B) (emphasis added).

<sup>33</sup> *Id.*

<sup>34</sup> 49 U.S.C. 44703(h)(1)(B) (excluding, among other things, records from "a branch of the United States Armed Forces").

training are not employed for purposes of operating an aircraft. Therefore, the FAA did not propose to require compliance with part 111 by part 61 or part 141 pilot schools or part 142 training centers with part 111. The FAA also considered comments regarding the applicability of part 111 to operators conducting operations under part 133 (Rotorcraft External-Load Operations) or part 137 (Agricultural Aircraft Operations). This final rule maintains the proposed exclusion of those operations, for the reasons discussed in the NPRM. Primarily, the FAA determined that those operators would not be likely to generate records that would be useful to a reviewing entity and that pilots employed by those operators will generally be employed by another type of operator that would be a reporting entity before attempting to find employment in service of a reviewing entity like an air carrier.

As discussed in the NPRM and adopted in this final rule, the PRD Act is not applicable to foreign operators. Furthermore, the FAA does not have the technical capacity to accommodate reporting from non-U.S. operators. The FAA does not expect such entities to include any records in the PRD; however, reviewing entities are free to seek out information from any other previous employer for whom the pilot worked in addition to accessing the pilot's PRD record.

As explained in the NPRM, the PRD Act requires all operators to request and review records prior to allowing an individual to begin service as a pilot. As a result, the Act's requirements apply to pilots of UAS when those UAS are used in air carrier operations. This rulemaking is limited to addressing the statutory mandate of the PRD Act; as a result, comments urging the FAA to initiate separate rulemakings are outside the scope of this rulemaking.

### C. Pilot Privacy

The PRD Act requires the FAA to promulgate regulations to protect and secure the personal privacy of any individual whose records are accessed in the new electronic database; to protect and secure the confidentiality of those records; and to prevent further dissemination of those records once accessed by an operator.

In the NPRM, the FAA proposed to mitigate risks to privacy by adopting strict privacy standards and establishing limits on access to the contents of the PRD. Specifically, the FAA will adhere to National Institute of Standards and Technology (NIST) Special Publication 800.53 Security and Privacy Controls for Federal Information Systems and

Organizations to secure information contained in the PRD.

### 1. Summary of Comments

Approximately 24 commenters, including A4A, the Cargo Airline Association (CAA), NBAA, and Cummins, Inc., expressed concerns related to privacy issues. A4A commented that notice of a pilot's death should be supported by a certified copy of a death notice from any source, not just from next of kin, in order to avoid overburdening the database with extraneous information and increasing the risk of privacy issues. Commenters remarked on the importance of keeping pilot records confidential and only maintaining sensitive pilot information related to termination of employment or unsatisfactory completion of airman flight checks, and expressed concern about the data security. Commenters recommended that pilots have control over who can access their records and asked whether pilots will have an opportunity to direct how the PRD will share their information.

Commenters opposed the PRD on privacy grounds, stating that these pilots never signed up to have this information shared. Several commenters opposed including non-performance and non-aviation related disciplinary records. Cummins Inc. also asked who inside the FAA would have access to the database and who outside the FAA would have access to the database and non-anonymized data. NBAA commented that the information contained in the PRD should only be available to qualifying employers for the purpose of evaluating a pilot-applicant.

The A4A and CAA called for the FAA to issue a Privacy Impact Assessment (PIA)<sup>35</sup> related to the PRD. The commenters stated a PIA is needed to address security and privacy risks of the PRD, given that the PRD will collect, access, use, and permit dissemination to prospective employers of pilot records. These commenters requested the FAA address issues such as the time the FAA expects for it to approve access to users, the training required of users, and applicable parameters that will ensure privacy.

The FAA also received comments on keeping records for the life of the pilot. Ameristar commented that if the FAA determines that any record should be expunged, the Agency should not maintain that record and referenced 49 U.S.C. 44703(i)(2)(A)(iii), which states

<sup>35</sup> A PIA describes a process used to evaluate the collection of personal data in information systems. The objective of a PIA is to determine if collected personal information data is necessary and relevant.

that the FAA should not include records subsequently overturned. The commenter said that expungement and "overturned" as used in the PRD Act could mean the same thing, and that adding definitions of these terms would provide some clarity as to the treatment of the records. Ameristar commented that these records should not be maintained nor made available upon PRD request.

The PlaneSense commenters stated they generally agreed with a dissent to the PRD ARC recommendation, which said that the FAA should remove and store, for an undefined period of time, deceased pilots' records from the PRD for security purposes or assistance with an investigation.

CAPA disagreed with the requirement for retention of pilot records for the life of the pilot. The commenter stated that no data supports that information from an event that may have occurred years ago has any bearing upon a pilot's current or future performance. The FL Aviation Corp. commented that a request for a lifetime of records is itself onerous and far-reaching and could cause spillover by forcing the purchase or update of additional programs to retain additional data.

An individual commenter expressed concern about "the code quality of the page where people register to use the Pilot Records Database," and stated the DOT sign-up pages for MyAccess should not be used because of poor quality and security concerns. This commenter also stated that the system should undergo a third party review.

A4A recommended the FAA clarify that information in the PRD may be shared with NTSB officials when investigating an accident or incident; however, all other protection provided in the NPRM should continue to apply.<sup>36</sup>

### 2. FAA Response

The FAA reiterates that the pilot is the only person with control over which external entities view that pilot's records in the PRD. A pilot must provide specific, time-limited consent to a reviewing entity before that entity is permitted to view a pilot's records. A reviewing entity can only query the PRD for records of pilots who have specifically granted consent to that operator. After the pilot grants consent for access to the records, the pilot must also provide the reviewing entity with the pilot's name and pilot certificate number before the entity can review the

<sup>36</sup> The NPRM proposed to exclude records contained in the PRD from FOIA in accordance with the PRD Act, subject to certain exceptions.

records. The FAA is obligated to ensure that only information that is relevant to a hiring employer's review of a potential employee is housed in the system. Limiting the data elements available to hiring employers is critical because the PRD Act requires the FAA to ensure pilot privacy is protected.

Additionally, the pilot can withdraw consent at any time for PRD Airman Records (PARs). Records associated with a pilot are only released to an operator (a reviewing entity) after the pilot has created a PAR and consented to release of that specific PAR to that specific operator. When a pilot provides consent in these cases, the PAR is only available for a limited period of time, as selected by the pilot. Each PAR is a "snapshot" of the records as they existed at that moment when the PAR is generated and will not change even if the records in the original data source change. This ensures that the pilot knows exactly what is being displayed to the reviewing entity. When new records are added to the PRD and the pilot wants the PAR to encompass those records, the pilot must grant an updated consent to release the updated PAR, which will then replace the previous PAR. For this reason, while PARs can be available for up to 60 days, reviewing entities may prefer that a PAR be released to them more recently to ensure the PAR reflects the most recent information available. In addition to PARs only being available for a limited time period, the pilot can also revoke access to a PAR at any time.

Reviewing entities that wish to review a PAR must also have the pilot's name and certificate number to retrieve the PAR. Even if a pilot has granted consent to the PAR, an operator will not be able to search for all available PARs without having the name and certificate number related to the PAR for which the entity is searching. The pilot will likely provide the pilot's name and certificate number to the hiring operator as part of the vetting process. If the operator attempts to search for a PAR, but the pilot has not yet granted consent to view the PAR, the PRD will report that no PARs were found for that pilot.

Other than when a PAR has been created and specific consent has been provided to a reviewing entity to view that PAR, records within the PRD are only accessible to the record owner. As previously described, the record owner is normally the same entity which created the record; however, ownership can change in some circumstances. An operator that has entered records into the PRD can always view, edit, or remove those records later, as

appropriate, as long as it continues to be the record owner.

The PRD administrator will have the ability to view a pilot's records within the PRD for the limited purpose of supporting a pilot's request to release those records to a reviewing entity. This process is only used if the pilot cannot access the PRD system and specifically requests the FAA release a PAR to a reviewing entity. This will occur when the pilot submits a completed and signed FAA Form 8060-14 to the FAA for processing.

Although the PRD administrator can view the records in the PRD associated with a pilot, the FAA does not access this information for any other purpose than to support a pilot's request to review that pilot's own information, made via FAA Form 8060-14,<sup>37</sup> and for other administrative purposes. With limited exception, the FAA will not be reviewing records in the PRD to search for instances of non-compliance with FAA regulations. The only circumstance in which the FAA would use records in the PRD in an FAA enforcement action would be in cases involving suspected non-compliance with Part 111. Records contained in the PRD could be used to prove instances of non-compliance with the PRD reporting requirements or the absence of records could be an indicator of non-compliance. In any event, the statutory exclusion of these records from release in response to a Freedom of Information Act request applies, with the exceptions listed in the PRD Act. The FAA is permitted to release records to NTSB officials when investigating an accident or incident.<sup>38</sup>

The PRD Act requires the FAA to maintain records in the PRD for the life of the pilot and does not provide the FAA with discretion to expunge records outside of that timeframe. The FAA acknowledges that there is no research indicating that maintaining records for the lifetime of a pilot imbues greater safety benefits than a more time-limited lookback such as what was required under PRIA. Expunction of a record is not the same as a record being overturned. For enforcement records, an action under appeal subsequently might change the outcome of the initial enforcement action. This could result in the enforcement record being overturned and subsequently expunged. Expunction also would occur when a pilot reaches 99 years of age or upon the FAA receiving a notification of death.

The FAA agrees with A4A that a notification of death need not be

submitted only by next of kin. Upon further consideration, the information required to be submitted is sufficient to ensure authenticity of the documentation and there is no safety or security concern that warrants limiting who is permitted to submit such information.

With respect to the comment concerning the design code of MyAccess, the FAA protects personal identifiable information (PII) with reasonable security safeguards against loss or unauthorized access, destruction, usage, modification, or disclosure. These safeguards incorporate standards and practices required for federal information systems under the Federal Information Security Management Act (FISMA) and are detailed in the Federal Information Processing Standards (FIPS) Publication 200, Minimum Security Requirements for Federal Information and Information Systems, and NIST Special Publication 800-53. Detailed information regarding the steps taken to safeguard information for MyAccess is available in the Privacy Impact Assessment for MyAccess.<sup>39</sup> The FAA will publish an updated PIA for the PRD in the docket for this rulemaking, as referenced in Section VI.H., *Privacy Analysis*.

#### D. Transition From PRIA to PRD

The FAA proposed a transition timeline from PRIA to PRD. The FAA requested comments on whether the transition period should be shortened or extended and whether it would be helpful for the FAA to maintain a publicly available list of all operators that are fully compliant with the PRD requirements during the transition period.

##### 1. Summary of Comments

Writing jointly, the Families of Continental Flight 3407 stated that the crash of that flight underscores the criticality and urgency of finalizing the rule. The families called on the FAA, the U.S. Department of Transportation, and the Office of Management and Budget to finalize the rule as expediently as possible, to ensure every operator has access to the most complete information possible in hiring pilots. The families also noted that nearly a decade has passed since Congress required the PRD in August 2010. They further compared the current economic challenges the air carrier industry faces to challenges in

<sup>37</sup> A copy of FAA Form 8060-14 has been placed in the docket.

<sup>38</sup> 49 U.S.C. 44703(k).

<sup>39</sup> U.S. Department of Transportation Privacy Impact Assessment, May 31, 2017, <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/privacy/282206/faq-myaccess-pia-05312017.pdf>.

the decade after September 11, 2001, which they state led to growth of regional airlines and cost-cutting measures that contributed to the preventable tragedy of Flight 3407. The group called on government and industry stakeholders to be cognizant of this history to ensure these mistakes are not repeated.

The Regional Airline Association (RAA) and Atlas Air commented that, because it is difficult to predict the amount of time required for the transfer of data, the FAA might need to extend the transition period. The RAA recommended that during the transition period the FAA maintain a publicly available list of carriers and other operators that are fully compliant with the PRD ahead of schedule so that prospective employers can query the PRD directly. Atlas Air and A4A recommended similarly the FAA re-evaluate the sunset of PRIA requirements at the end of the transition period and extend it if not all affected carriers are in compliance with the PRD historical records requirement. Atlas Air highlighted that the uncertainties of the coronavirus disease 2019 (COVID-19) public health emergency may impact carrier compliance. A4A also recommended extensive industry participation in a test pilot program.

## 2. FAA Response

The FAA acknowledges the wide range of comments received regarding the timing of the implementation of the PRD and the transition period between PRD and PRIA. The FAA agrees that expeditious implementation of the PRD is a top priority, but understands the potential technical challenges that could occur during the course of the transition. After consideration of comments on this topic, the FAA made changes to the compliance dates and added interim compliance markers to facilitate a smooth transition. These changes are discussed further in Sections V.A.2 and V.E.

The interim compliance dates are for submission of the responsible person application, review of FAA records, review of industry records, reporting new records, and reporting historical records prior to the sunset of PRIA. This rule also provides the opportunity for certain operators to request a deviation in the event of unforeseen difficulties with the transfer of historical records. The PRD will also provide information regarding which employers have fully completed historical record upload for a particular pilot in order to eliminate any duplicative reporting during the transition period. The FAA intends to collaborate with industry by providing

helpful information regarding the transition upon identification of responsible persons by each operator subject to this rule.

## V. Section-by-Section Discussion of Regulatory Text

This section provides an explanation of substantive changes adopted in this final rule, as well as summaries of provision-specific comments and FAA responses. It should be noted that there are non-substantive revisions made throughout the regulatory text, such as section number changes or edits made for clarity and consistency.

In the NPRM, the FAA proposed to include subpart E to facilitate the transition from PRIA to PRD. However, the FAA did not adopt a regulatory requirement for continued compliance with PRIA in this rule. Because PRIA continues to be self-implementing in statute until September 9, 2024, part 111 does not need to include a regulatory requirement for continued compliance with PRIA. The FAA provides updated guidance in AC 120-68J with further information about continued compliance with PRIA as related to PRD compliance. The FAA includes sunset of PRIA in subpart A and requirements for reporting historical records in subpart C.

### A. Subpart A—General

#### 1. Applicability—Section 111.1

The FAA proposed that part 111 would generally be applicable to part 119 certificate holders, fractional ownership programs, persons authorized to conduct air tour operations in accordance with § 91.147, persons operating a corporate flight department, governmental entities conducting public aircraft operations (PAO), as well as pilots with part 107 remote pilot certificates operating a UAS for compensation or hire.

Substantively, the FAA adopts § 111.1 as proposed. After reviewing comments received on the applicability of the rule, discussed extensively in Section IV.B., the FAA acknowledges that pilots employed by the operators mentioned previously transition much less frequently than originally anticipated to employment with reviewing entities. This revised method of reporting is discussed in greater detail in Section V.C.4. Given that change, although the previously-mentioned entities are still subject to part 111, the burden imposed is proportionate to the level of risk mitigation necessary to fulfill the intent of the PRD Act.

The FAA amends the regulatory text proposed originally in § 111.1 for

consistency and to clarify which pilots are subject to the applicability of the PRD. The proposed text captured which certificates a pilot would typically hold in order to be subject to the PRD, but did not note that only pilots who are employed by or seeking employment with an entity subject to the applicability of this part would need access to the database. The final rule removes the reference to the specific certificates pilots hold, and instead includes a requirement that would apply to any pilot working for a reporting entity or seeking employment with a reviewing entity.

The FAA also moved the applicability criteria for persons whom the FAA defined in the NPRM as “corporate flight departments” (referenced as such in this preamble) into § 111.1(b)(4). The FAA amends the criteria for a corporate flight department to include not only those who operate two or more type rated airplanes but also those who operate two or more turbine-powered rotorcraft, or any combination of two or more of those aircraft. By adding turbine-powered rotorcraft to this criteria, this rule applies to operators that operate more than one complex aircraft under part 91. After reviewing comments on corporate flight departments, as described in Section IV.B., the FAA determined the definition proposed in the NPRM inadvertently excluded turbine-powered rotorcraft operators. These turbine-powered rotorcraft operators generally utilize advanced aircraft under part 91; thus, their contributions to the PRD are as meaningful for safety as those operating type-rated airplanes.

The FAA also adds applicability criteria for PAO, which references the statutory definition and criteria for PAO under 49 U.S.C. 40102 and 40125, but does not include operations conducted by any branch of the United States Armed Forces, National Guard, or reserve component of the Armed Forces. This applicability provision aligns directly with the PRD Act.

The FAA also adopts regulatory text to provide criteria for when a trustee in bankruptcy must comply with the requirements of part 111, proposed originally in its own section in the NPRM. The FAA proposed that any operator subject to the applicability of part 111 that files a petition for bankruptcy would still be required to report records to the PRD. The FAA proposed that the trustee appointed by the bankruptcy court may act as the responsible person for reporting those records to the PRD. This section is adopted as proposed with non-substantive edits, one of which notes

that a trustee must comply with the reporting requirements of subparts A and C of part 111. While the NPRM only listed subparts C and E, the terms of access in subpart A would also be applicable to a trustee. Sections V.A.3 and V.C.11 contain summaries of, and responses to, comments about requirements related to a trustee in bankruptcy.

Lastly, this rule contains a reference to 14 CFR part 375 (Navigation of Foreign Civil Aircraft within the United States), expressly to exclude foreign operators from the applicability of this rule. Although foreign operators are regulated by 14 CFR part 375, as discussed in the NPRM, Congress did not include those operators in the PRD Act.

## 2. Compliance Dates—Section 111.5

In the NPRM, the FAA proposed compliance with part 111 by two years and 90 days after publication of the final rule. The FAA revises the proposed compliance dates in this final rule. The compliance dates specific to each section or subpart were moved to the applicable section or subpart for clarity. Section 111.5 provides the final date by which full compliance with the provisions of part 111 is required.

The FAA considered comments on the transition from PRIA to PRD, further discussed in Section IV.D., and how to facilitate a smooth transition to full compliance with the PRD for both industry and the FAA. Upon consideration, the FAA determined that it would not negatively affect safety to extend the final date of compliance, primarily because the final rule adopts interim compliance dates set between publication and September 9, 2024, to ensure persons subject to the rule begin using the PRD before the final compliance date. The compliance period is longer than originally proposed, but also begins with specific steps towards compliance earlier than originally proposed. As a result of the revised compliance dates, industry would begin reporting new records and historical records dated on or after January 1, 2015 one year after publication of the final rule. The extra year granted for extended compliance serves to provide a full two years of transition time for upload of historical records.

The FAA's primary objective in adopting this final rule with interim compliance dates is to be able to start extensive and necessary collaboration with industry to populate the PRD with the highest quality data. Additionally, the FAA is extending the compliance timeline because the FAA is developing

a method of electronic transfer to facilitate reporting of large amounts of historical records simultaneously. This will ease the process of reporting historical records for operators reporting records from 2005 and 2010, respectively. The FAA is committed to working with industry to enable a smooth transition from PRIA to PRD and desires the least burdensome process possible for record transfer. If the FAA is not able to provide a method of electronic transfer prior to the final compliance deadline, the FAA will consider extending the compliance date.

The FAA originally included subpart E in the proposed rule, which stated that air carriers and other operators subject to the applicability of PRIA would no longer be permitted to comply with PRIA two years and 90 days after publication of the final rule. The FAA adopts that section here. Some commenters recommended that the FAA continue PRIA; however, as the FAA discusses in Section IV.C.4 regarding comments about the transition to PRD, the PRD Act includes an explicit requirement that the FAA's implementing regulations for PRD must sunset PRIA. This section is amended to incorporate the extension of the final compliance deadline by one year. Use of PRIA is no longer permitted after September 9, 2024.

## 3. Definitions—Section 111.10

The FAA proposed several definitions in the NPRM. In response to comments received, the FAA amends several definitions to capture accurately the intent of the requirement and maintain consistency with other sections of part 111. The FAA also removed some definitions proposed in the NPRM after determining they were redundant or did not need to be codified.

### i. Comments Received

NBAA commented on the FAA's proposal to define the term "employed" as being paid for more than 20 hours per week for services rendered to the operator. NBAA explained it expects this definition to apply when describing individuals eligible to be the operator's responsible person and to the term "individual employed as a pilot." NBAA contended operators should not be responsible for submitting records for pilots who are employed less than half time, as this will avoid duplication of training records. NBAA also recommended aligning the definition of "employed" with the common industry practice of employing contractors on a daily basis. NBAA recommended that the FAA use the defined phrase "individual employed as a pilot" in

§ 111.105 when describing when a hiring operator needs to evaluate pilot records.

The PlaneSense commenters noted the proposed definition of "individual employed as a pilot" assumes the pilot is employed by the company at the time the pilot first undertakes training, creating an obligation to provide data on a pilot who may be receiving training, but is not yet an employee and may not become an employee. These commenters argued the definition is overly broad and that training records could be used against them by a future employer. The PlaneSense commenters stated such a requirement would circumvent an employer's and applicant's right to privacy regarding screening and hiring practices. These commenters requested the FAA revise the rule to reflect that the pilot has been hired or otherwise retained by the reporting company.

Cummins, Inc., A4A, and Ameristar expressed concern that the NPRM did not include a clear definition of "pilot performance." Cummins urged the Agency to include clear guidelines regarding what constitutes pilot performance and flying duties to ensure a consistent understanding of the data to be included in the database.

Ameristar recommended amending the definition of "Record pertaining to pilot performance" to identify specific events that must be maintained in the record, and that these events be limited to events required by law or regulation; for example, the term should include records of whether a pilot passed or failed a proficiency check. Ameristar recommended the FAA define additional terms such as "good faith" and "trustee in bankruptcy" for clarity and to remove subjectivity. Ameristar also suggested a "trustee in bankruptcy" be expanded to "a trustee in bankruptcy of an air operator that hires or utilizes pilots." Regarding the discussion about part 135 operators, Ameristar noted that the rule did not distinguish part 135 operators from part 135 air carriers. Ameristar indicated the proposed definition of "historical record" suggests the record is only generated after another operator requests that record. Ameristar recommended that the FAA amend the definition to read ". . . means records maintained by an air carrier or other operator under the requirements of this section (§ 111)" and delete the rest of the proposed definition.

A4A argued similarly that the FAA should clarify the meaning of "pertaining to pilot performance." Specifically, A4A asserted the proposed rule fails to resolve one of the key issues

that divided the members of the PRD ARC; namely:

Whether the disciplinary or termination records of a pilot who committed documented acts of racial discrimination, sexual harassment, harassing or intimidating behavior that impedes crew resource management, off-duty alcohol or drug misconduct, theft, fraud and/or dishonesty should be reported into the PRD.

A4A noted that the issue of drawing boundaries around the “performance of a pilot” split the PRD ARC members and constituted almost 20% of the PRD ARC Report. A4A suggested that some language in the NPRM could be read to support the position that records of actions such as harassment and lying should not be entered into the PRD, but that other aspects of the NPRM, FAA regulations, legislative history, and general good piloting practices would strongly support the submission of the grounds for the discipline and termination into the PRD. A4A stated that parties need definitive guidance from the FAA on how to handle the records of pilots who commit serious misconduct. Without a specific definition, A4A argued, whether a specific act is “related to the core duties and responsibilities of a pilot” will differ from employer to employer and may even differ within a single employer’s pilot population as the phrase becomes subject to disputes leading to arbitration and third-party resolution. A4A recommended that the final rule clarify what is included in a pilot’s “core duties and responsibilities” and specifically address “whether it includes crew resource management considerations and the obligation to treat all persons with dignity and respect.”

NBAA recommended that the FAA use consistent phrasing throughout the document and noted the need for consistency in the use of the words “air carrier” and “other operators.” For example, NBAA stated that based on the proposed language in § 111.220 it was not clear if the reporting requirements apply to “other operators.” An individual commenter stated “other persons” is vague and arbitrary and urged the FAA to define the term and open the definition for public comment. This commenter also noted the NPRM did not define the term “public aircraft operations.”

#### ii. FAA Response

The FAA revises the definition of “begins service as a pilot” to distinguish at what point the FAA considers a pilot to have begun service with an employer such that a PRD evaluation must have been completed for that pilot. This date

is in contrast to the “PRD date of hire” which is the first date on which an employer must begin entering records for a pilot. The “PRD date of hire” would include initial training and other training completed prior to beginning service as a required flight crewmember. The FAA also incorporates part of the proposed definition of “Individual employed as a pilot,” which was duplicative of the definition of “begins service as a pilot,” and adds that the individual can be employed directly or on a contract basis.

Commenters conflated the review of an individual’s records, which is not required to be complete until the individual begins service as a pilot, with when records must be reported about an individual, which will include any training that occurs prior to a pilot becoming a required flight crewmember. All records generated about a pilot from the PRD date of hire by the employer will be subject to the applicability of the PRD. For the purposes of reporting records to the PRD, the “PRD Hire Date” means the earliest date on which an individual is expected to begin any form of company required training or to perform any other duty for an operator subject to the applicability of part 111 in preparation for the individual’s service as a pilot, including both direct employment and employment that occurs on a contract basis for any form of compensation.

The NTSB expressed an interest in ensuring all records applicable to events prior to beginning service as a pilot would be captured in the PRD, discussed further in Section III.A.1. The FAA intends to capture any records that an operator may generate about a pilot in the time between when a pilot begins training and the time a pilot is actually assigned to act as a required flight crewmember. The FAA does not agree with commenters who asserted that training records that occur when a pilot is beginning employment with an operator should not be included in the PRD. As discussed further in Section V.F.3, the FAA and other commenters believe those records have significant value to a potential hiring employer. Any training that occurs prior to a pilot’s actual employment with an operator would not be included in the PRD due to the constraints of the PRD Act, but if the pilot is receiving training and any form of compensation for that training, the FAA will consider that pilot to be employed for purposes of part 111.

The FAA defines “begins service as a pilot” to mean the earliest date on which a pilot serves as a pilot flight crewmember or is assigned duties as a

pilot in flight for an operator that is subject to the applicability of this part. This definition applies when a pilot’s records must have been evaluated prior to allowing a pilot to begin service. This means an operator could hire a pilot and begin training before evaluating all of the records in the PRD. However, a pilot cannot be assigned to pilot duties without the operator having evaluated the records in the PRD.

Some commenters were concerned with how the definition of “employed” was used in the proposal. “Employed” in the context raised by NBAA refers to proposed criteria for a responsible person, described in the preamble of the NPRM, with no relationship to a pilot’s employment with an operator for purposes of reporting pilot records to the PRD. For the purpose of accessing the PRD, the proposed rule considered a responsible person for an entity conducting public aircraft operations or corporate flight department must be paid for more than 20 hours a week for services rendered to the operator. After considering comments, the FAA is not adopting the NPRM preamble description of “employed” as an eligibility factor for a responsible person.

The FAA amended the definition of “final separation from employment record” by removing the list of examples of separation from employment actions, which had included resignation, termination, physical or medical disqualification, professional disqualification, furlough, extended leave, or retirement. This revision reduces redundancy with the updated requirements in this rule, which address this subject adequately by describing the different possible categorizations for separation from employment actions in subpart C of part 111.

The FAA amends the definitions of “final separation from employment action” and “final disciplinary action” to reflect that it is incumbent on the operator to determine at what point a disciplinary or separation action is final and therefore subject to either reporting requirement in the PRD. Each operator has sufficient knowledge and oversight over its own processes for handling disciplinary action; therefore, the operator is in the best position to determine that an action is not subject to a pending dispute, which would include any legal proceeding regarding the final result of that action. Once no longer pending, including a record of it is appropriate. Section V.C.7 includes a description of the comments the FAA received on this topic.

In response to comments asking for clarification of training records pertaining to pilot performance, the FAA publishes an Advisory Circular, AC120–68J<sup>40</sup> with this rule that includes specific lists of events which the FAA expects to be entered into the PRD based on the training program for a particular pilot. The FAA intends that if a record exists for the pilot as described at § 111.225 and as further described in the AC, and the record is retained by the reporting entity, then it must be entered into the PRD. Each record type that an operator will report is described by the event that prompts the reporting requirement. The FAA considered including the specific listing in part 111, but determined that approach would limit the reporting flexibility needed as training and checking evolves in the future. The FAA also removed the reference to the FAA from this definition, because roles and responsibilities assigned by an employer inherently are subject to FAA regulations or other regulations without explicit mention in this definition.

The FAA further establishes in this final rule what the Agency considers to be a record associated with pilot performance. In § 111.10, the FAA defines a record pertaining to pilot performance as records of an activity or event directly related to an individual's completion of the core duties and responsibilities of a pilot to maintain safe aircraft operations. The duties and responsibilities are assigned by the employer and are based on FAA regulations or other applicable regulations, such as the Transportation Security Administration or the Pipelines and Hazardous Materials Safety Administration. Ultimately, the employer reporting the record would determine whether the action causing the employer to terminate the pilot's employment affected safe aircraft operations, as it is a case-by-case determination. Situations may occur in which a pilot's behavior or actions are not directly related to operating the aircraft but still affect that pilot's ability to maintain safe aircraft operations. One example of this would be documented harassment of a coworker who operates an aircraft with that pilot, regardless of whether the harassment occurs during flight operations. Fear of harassment could negatively affect safe aircraft operations. The FAA does not believe that it should preclude an employer from considering such an event as

related to a pilot's performance if that employer believes the event is fundamentally related to maintaining safe aircraft operations, which includes effective crew resource management. Overall, because good judgment by the pilot is a critical part of safe aircraft operation, pilot performance could include events other than those strictly related to a pilot's level of skill in operating an aircraft.

The FAA removed the definitions of "air carrier," "other operator," and "participating operator" from this final rule because those definitions were duplicative of applicability requirements. Where the FAA refers to "operators" in the regulatory text and the preamble, it is referring generally to all operators, including air carriers and other certificate holders, who would be subject to the applicability of this part.

After review and evaluation of the comments, the FAA amended the definition of "historical record" to remove the reference to the Administrator, as it was not necessary. In addition, this rule contains an amended applicability provision describing PAO, which provides specific criteria based directly on applicable statutory provisions.

This rule includes two definitions not proposed in the NPRM, to add clarity to the regulatory text regarding which operators are subject to each requirement. The FAA defines *Reviewing entity* as an operator subject to the applicability of subpart B of part 111 (Access to and Evaluation of Records); and *Reporting entity* as an operator subject to the applicability of subpart C of part 111 (Reporting of Records). These definitions do not substantively change part 111.

The FAA did not adopt a regulatory definition of "access the PRD," but confirms its meaning is to use the credentials issued by the Administrator in accordance with this part to retrieve information related to an individual pilot, to report to the PRD information required by this part, or for a responsible person to manage user access. A pilot also would access the PRD to grant consent to a reviewing entity to access that pilot's records.

Lastly, this rule does not include a definition of writing/written in part 111. The FAA will provide the appropriate signature requirements within the identity verification mechanism of PRD approval, as the FAA expects the PRD will accept digital signatures. Digital verification of the pilot's identity by logging into the PRD could also serve as a signature.

The FAA otherwise adopts § 111.10 substantively as proposed. The FAA

evaluated all comments regarding perceived lack of clarity or inconsistency in phraseology used and made updates to the final rule to convey clearly the requirements of each section. The FAA determined that prescriptive definitions of "good faith exception" and "trustee in bankruptcy" were not necessary, because the underlying regulations concerning these terms describe them adequately in context of the applicable requirements. This rule also contains edits throughout part 111 to maximize regulatory clarity, which alleviates the need include the other definitions that commenters requested.

#### 4. Application for Database Access—Section 111.15

In the NPRM, the FAA proposed requiring an operator's responsible person to submit an application for database access including information necessary for identity verification. The proposed rule included the ability for a responsible person to delegate PRD access to two other types of users (proxies and authorized users) and proposed minimum qualification requirements for the responsible person. Proposed § 111.15 also included terms for continuing access to the PRD, requirements for changes to application information, and timelines for compliance for new operators subject to this part.

This rule revises paragraph (a) to include an updated interim compliance date in which reporting entities must submit an initial application for database access. After considering comments received regarding observed gaps in PRIA, particularly those received from the NTSB and the Families of Continental Flight 3407, the FAA determined PRD implementation would be served best by ensuring employers subject to the rule begin to transition from PRIA to PRD as soon as possible. The FAA also acknowledges comments received requesting greater collaboration with industry and more time to enable compliance, especially considering potential technological difficulties and the effects of the COVID–19 public health emergency on the aviation industry.

The next step in building the industry records component of the database and facilitating its use is to ensure each operator subject to the applicability of this rule has identified a responsible person in the database. The PRD program manager will collaborate with that individual on the transition process. Consequently, the FAA includes a provision in § 111.15(a) requiring operators to submit an application with all of the information

<sup>40</sup> Advisory Circular 120–68J, The Pilot Records Database and Pilot Records Improvement Act Advisory Circular, which will be published to the docket for this rulemaking.



identified in § 111.15 by September 8, 2021. Operators initiating operations after September 8, 2021, must submit an application at least 30 days prior to initiating operations. Additionally, trustees in bankruptcy appointed for an operator subject to the applicability of this rule must begin to comply with the transition timelines of this rule as prescribed by part 111, as applicable. Because a trustee can either be delegated access or apply to be a responsible person, the FAA does not envision that every trustee would submit an application, but to the extent a trustee would be a responsible person and is currently appointed in accordance with the criteria in this section, the FAA would expect that trustee to submit an application if the trustee will be a responsible person.

The FAA makes clarifying amendments throughout the regulatory text in § 111.15(b)–(h), but does not make any other substantive changes to the requirements for the application for database access, except to require submission of a telephone number to accompany the email address. In response to a comment from CAA regarding how long the FAA expects to take to approve the PRD user access, the FAA requests applicants submit their applications one week in advance of necessary access.

#### 5. Database Access—Section 111.20

Proposed § 111.20 set forth the conditions under which authorized users and proxies, to whom a responsible person has delegated access, may access the PRD. Notably, persons may only access the PRD for purposes of uploading, reviewing, or retrieving records in accordance with the requirements of part 111. The FAA also proposed that if a responsible person's PRD access is terminated, the access of the authorized users and proxies may be terminated.

The FAA modifies proposed § 111.20 to consolidate parts of the section and to convey the FAA's intent to limit access to the PRD in a manner that is aligned entirely with the purpose of the PRD Act. A person may access the PRD only in a manner consistent with the purposes set forth in this section: For reporting pilot records or for reviewing pilot records to inform a hiring decision about a specific pilot. The responsible person is accountable for ensuring that any person accessing the PRD complies with part 111 when reporting or reviewing records on behalf of the responsible person. Further, under this final rule and in accordance with the PRD Act, proxy companies will not be permitted to collect PRD data about any

pilot for use by that company outside its specific employment with a particular operator for reporting or review of an individual pilot's records. "Skimming" or otherwise aggregating pilot data outside of the PRD for re-sale or to provide a list of pre-screened pilots is strictly prohibited both by § 111.20 and 49 U.S.C. 44703(i).

Lastly, as proposed in the NPRM and as adopted in this final rule, PRD access for authorized users and proxies is contingent on the continued validity of the responsible person's electronic access.

#### 6. Denial of Access—Section 111.25

The NPRM proposed that access credentials for the PRD would be subject to duration, renewal, and cancellation for a length of time to be determined by the Administrator. The FAA also proposed conditions under which the FAA could deny access to the PRD due to misuse of the database, including intentionally reporting inaccurate information, and as necessary to protect the security of the PRD. The FAA proposed denying access if an operator's operating authority is revoked. The proposed rule included a procedure for reconsideration of denial of access.

The FAA revises and reorganizes § 111.25 to remove duration, renewal, and cancellation of responsible person credentials, and modifies the title of the section accordingly. Those provisions did not specify a timeframe for any of those activities as it relates to the electronic credentials because the duration depends on the vendor providing the identity verification. Because multiple ways exist for complying with application submittal, identity verification, and approval for access, the FAA will provide further detail regarding the technological specifications of user accounts. As stated in the NPRM, the PRD will comply with all Federal guidelines for electronic databases. The final rule retains the proposed provisions for denial of access in this section, because the section contains the criteria under which database access may be denied and does not contain specific terms based on changing technology the PRD might use. The final rule also adds an intent requirement to one of the stated bases for denial of access, such that the intentional reporting of false or fraudulent information to the database is an enumerated reason to deny access.

The final rule further authorizes denial of access if the FAA suspends an operator's operating authority, such as a letter of authorization or operating certificate. This provision is otherwise adopted as proposed.

#### 7. Prohibited Access or Use—Section 111.30

The FAA proposed to prohibit unauthorized access or use of the PRD, including a prohibition on sharing records with anyone not directly involved in the hiring decision. The FAA adopts § 111.30 as proposed, except for a change to permit a pilot to share the pilot's own PRD airman record (PAR) without being subject to the prohibitions in part 111.

The FAA did not adopt the proposed definition of "directly involved in the hiring decision" as it is unnecessary. As stated in the NPRM, that phrase means:

[A]ny individual who is responsible for making pilot hiring decisions on behalf of the employer or who is responsible for advising the decision maker on whether or not to hire an individual as a pilot.

Pilot records must not be shared outside of persons working on behalf of a reviewing entity in furtherance of that specific hiring process.

In the NPRM, the FAA proposed to require air carriers and other operators complying with subpart B to maintain the privacy and confidentiality of pilot records, as required by the PRD Act at 49 U.S.C. 44703(i)(13). Specifically, the FAA proposed to require air carriers and other operators to secure pilot records in the normal course of business. The FAA adopts that proposed provision in this section with revisions to mirror the statutory standard for protection of such records. The intent of the regulation as proposed does not change; for example, if a hiring employer rendered pilot information insecure by distributing that pilot's PAR throughout the company to individuals not directly involved in the hiring process, the hiring employer would be in violation of this regulation.

In the NPRM, the FAA proposed to mitigate risks to privacy by adopting strict privacy standards and establishing limits on access to the PRD, and adopts those standards throughout this part. Specifically, the FAA will adhere to National Institute of Standards and Technology (NIST) Federal Information Security Management Act (FISMA) 800.53 Security and Privacy Controls for Federal Information Systems and Organizations to secure information contained in the PRD. The FAA further discusses issues raised by commenters with respect to pilot privacy in Section IV.C.

The FAA also removed paragraph (c) concerning the Administrator's access and use of information maintained in the database for purposes consistent with oversight. The FAA determined that while it will use its oversight



authority to ensure compliance with part 111, it was not necessary to codify the statement in the regulations.

#### 8. Fraud and Falsification—Section 111.35

The FAA proposed to prohibit fraudulent or intentionally false statements from being reported to the PRD. The FAA adopts § 111.35 substantively as proposed, with edits to the regulatory text to reorganize the section. Section V.C.11 contains a summary of, and response to, comments the FAA received regarding the inclusion of false or fraudulent statements as it relates to the record correction and dispute resolution process.

#### 9. Record Retention—Section 111.40

In proposed § 111.50, the FAA proposed to require records remain in the PRD for the life of the pilot. The proposed rule stated a pilot's records would be removed from the database upon notification of death from next of kin or when 99 years have passed since the individual's date of birth. The FAA adopts this provision with one substantive change, reorganizes the section, and rennumbers it as § 111.40. As summarized in Section IV.C and in response to comments, the FAA is removing the requirement that the notification of death come from the pilot's next of kin. The FAA also removed the record retention instructions for such records from this regulatory provision. The record retention term absent the notification of death described in this section is captured in the appropriate record retention schedule. The removal of this term from the regulatory text does not affect the FAA's requirements for such information.

Although identifying information from the pilot's record will be removed after notification of death or 99 years have passed since the individual's date of birth, the FAA may use de-identified information from those pilots in the database for research and statistical purposes to further the Agency's safety mission.

#### 10. Sections Not Adopted

##### i. User Fee—Proposed Section 111.40

Previously, § 111.40 contained the FAA's proposal for a user fee for accessing the PRD to evaluate pilot records. The FAA received comments from both organizations and individuals regarding the proposed user fee, most expressing opposition. Commenters were concerned about the cost of the fee and how a fee would affect a reviewing entity's ability to view a pilot's PAR

multiple times. Commenters also proposed different ways of adjusting the fee, which would have either benefited smaller operators or large operators depending on the method.

After considering the comments received and the changes to the structure of the database to ensure a burden proportionate to the safety benefits of this rule, the FAA determined to withdraw the user fee proposal, for multiple reasons. The new method of reporting in § 111.215 may require a reviewing entity to access a pilot's PAR more than once. Uncertainties also exist regarding how COVID-19 will impact hiring for reviewing entities, which would affect the user fee analysis. Therefore, no fee will exist for accessing the PRD at this time. The FAA will continue to evaluate the cost of the PRD and may revisit this determination at a later time.

##### ii. Freedom of Information Act (FOIA) Requests—Proposed Section 111.45

Under § 111.45, the FAA proposed that PRD records would be exempt from FOIA, with some exceptions, as set forth in 49 U.S.C. 44703(i)(9)(B). Specifically, information reported to the PRD would be subject to disclosure as follows: (1) De-identified, summarized information may be disclosed to explain the need for changes in policies and regulations; (2) information may be disclosed to correct a condition that compromises safety; (3) information may be disclosed to carry out a criminal investigation or prosecution; (4) information may be disclosed to comply with 49 U.S.C. 44905, regarding information about threats to civil aviation; and (5) such information as the Administrator determines necessary may be disclosed if withholding the information would not be consistent with the safety responsibilities of the FAA.

##### a. Comments Received

A4A, the PlaneSense commenters, and an individual commented on proposed § 111.45, which addresses the FOIA requests. The commenters generally agreed with the proposal to exempt certain information reported to the PRD from disclosure in response to FOIA requests but relayed specific concerns regarding the language of the section or on the scope of the information permitted to be released. A4A also recommended the FAA clarify the definition of "de-identify," and what information can be shared with NTSB officials, and that carriers should have the ability to limit access to certain kinds of records. A4A stated that the FAA must state explicitly whether it intends to use PRD data for purposes

other than to meet PRD requirements. It also commented that the NPRM permits disclosure of information to correct a condition that compromises safety, consistent with an exception codified in part 193. The commenter said that the language in part 193 exceptions includes ensuring "that the holder of an FAA certificate is qualified for that certificate, and preventing ongoing violations of safety or security regulations." The commenter stated this raises the issue of whether the FAA intends to use the submitted information to take enforcement action.

The PlaneSense commenters and another individual recommended eliminating any reference to criminal investigation or prosecution and providing that the information may only be disclosed pursuant to a duly issued court order or subpoena. The PlaneSense commenters also requested that the provision of the proposal permitting release of records in the database in situations consistent with the safety responsibilities of the FAA not be used without prior reason to do so arising out of facts and circumstances occurring external to the database. Commenters said this section is overbroad and would permit the FAA to "go fishing" for enforcement information that might not otherwise have been identified by the FAA in the normal course of business. Commenters also opined that 24-hour access to data uploaded by those obligated to do so is an unwelcome intrusion on both the pilots' and the reporting employers' privacy.

Another commenter recommended the PRD have an Oversight Board to monitor the database, to request data from FAA, and to conduct investigations into aviation safety issues and training. The commenter said that the PRD would fit well under the Aviation Safety Information Analysis and Sharing umbrella and recommended that the FAA look at this program.

A4A suggested that the FAA includes an additional exception to PRD data disclosure under FOIA that permits PRD data disclosure only to the extent permitted by the Privacy Act, including routine uses described in the System of Records Notice for DOT/FAA, Aviation Records on Individuals. A4A commented that the FAA should provide the public with an opportunity to discuss what disclosures, permitted by the Privacy Act, it shall include for purposes of the PRD Act.

##### b. FAA Response

The FAA does not adopt the proposal to include the statutory disclosure

prohibitions in regulatory text because the statutory protections exist regardless of inclusion in this regulation. The FAA will process all FOIA requests in accordance with 5 U.S.C. 552 and current Agency procedure for such requests, claiming FOIA exemptions associated with the statutory protections listed in 49 U.S.C. 44703(i)(9)(B), where applicable.

Regarding comments on records contained in the PRD that would be subject to potential disclosure if the information is used as part of a criminal investigation or prosecution, the PRD Act specifically excludes information used to carry out a criminal investigation or prosecution from the information protection described in 49 U.S.C. 44703(i)(9)(B). The PRD Act does not narrow that exclusion to apply only to information provided in response to a duly-issued court order or subpoena. The FAA will handle requests for such information in accordance with established practices for provision of information used to carry out a criminal investigation or prosecution. As allowed by the PRD Act, the FAA may also use de-identified, summarized information to explain the need for changes in policies and regulations. Statistical information derived from such de-identified information may become available to the public in the future. A commenter requested clarification regarding the FAA's meaning of "de-identified." The term "de-identified" has a similar definition to the definition the commenter mentioned from part 193.<sup>41</sup> The FAA would also remove the pilot's certificate number so that there would be no way to discern the pilot's identifying information. The FAA does not retrieve pilots' records from the PRD for FAA enforcement or investigative purposes related to the pilots themselves.

The PRD Act, at 49 U.S.C. 44703(k), does not preclude the availability of a pilot's information to the NTSB in accordance with an investigation. The FAA would make records available to the NTSB in accordance with established procedures for provision of such information. Lastly, the FAA declines to establish an Oversight Board for the PRD, as doing so by regulation is beyond the scope of the proposed rule.

The FAA will publish an updated Privacy Impact Assessment (PIA) for the PRD system, which will be available at

<sup>41</sup>In 14 CFR part 193, "de-identified" means that the identity of the source of the information, and the names of persons have been removed from the information.

*dot.gov/privacy* and in the public docket for this rulemaking.

#### B. Subpart B—Access to and Evaluation of Records

##### 1. Applicability—Section 111.100

In the NPRM, the FAA proposed that part 119 certificate holders, fractional ownership programs, and operators conducting air tour operations would be required to access the PRD to evaluate a pilot's records. The FAA adopts § 111.100 substantively as proposed. The applicability of this subpart remains unchanged from the NPRM. The FAA made edits to maximize regulatory clarity and to capture corresponding changes from other sections of part 111, as well as to consolidate duplicative requirements, and to add compliance dates for subpart B to this section.

##### i. Comments Received

The NTSB expressed support for the proposal to extend the evaluation requirements to non-air carrier entities, including corporate flight departments and air tour operators conducting operations in accordance with § 91.147. The NTSB noted that the FAA, in response to Safety Recommendation A-05-01, proposed to require all applicable operators to access and evaluate a pilot's records in the PRD before making a hiring decision. The NTSB stated if the final rule is consistent with the NPRM, it believes the final rule would meet the intent of Safety Recommendation A-05-01. A4A stated it believes the PRD information will be used earlier in the hiring process before a conditional offer of employment is made to the pilot. One individual commented that use of the PRD will lead to a safer transportation system and that the system should not rely on pilot record books.

Other commenters suggested the PRD would not be helpful in the hiring process because operators and owners already are incentivized to make informed hiring decisions based on a rigorous interviewing and screening process, regardless of regulatory requirements, given the significant liability associated with those decisions. Commenters also felt the PRD would not be beneficial for part 91 operators, opposed requiring any part 91 operators to review records, and indicated part 91 operators communicate directly with other flight departments as part of the applicant screening process. An individual commenter noted some operators do not have fulltime pilots and often need crew at the last minute, and asserted accessing and evaluating

PRD records on short notice would be impossible. Overall, some commenters generally contended operators would not use the database.

##### ii. FAA Response

The FAA agrees that all entities subject to this rule have an inherent incentive to make informed hiring decisions when hiring pilots. The FAA reiterates that the PRD is not intended to be the only source of information used by a subject employer when hiring a pilot. Neither does this rule tell a prospective employer what hiring decision to make on a pilot's job application after viewing pertinent information in the PRD. Rather, consistent with the PRD Act and the FAA's safety mission, this rule will ensure that critical information regarding a pilot's record does not go unnoticed or unshared. Regarding the comments about pre-existing coordination between flight departments, the FAA notes that corporate flight departments as set forth in the applicability of this section are not required to review records under part 111, but may opt into the database voluntarily for record review.

In response to the commenter who was concerned about a lack of time to review a pilot's record's on short notice, the FAA reiterates that a primary advantage of the PRD is the availability of records for hiring employers in an electronic database that is easily accessible.

The FAA adopts revised compliance timelines for subpart B in this section. Under § 111.15, all operators required to comply with subpart B will have a responsible person established in the database beginning no later than 90 days after the date of publication of the final rule, so the review of FAA records in the PRD is the next logical step toward facilitating full compliance with part 111. Some operators are already using the PRD optionally to review FAA records. The FAA acknowledges that the NTSB as well as members of Congress and the Families of Continental Flight 3407 are invested in the quick implementation of the PRD. The FAA finds that interim compliance helps quicken implementation and facilitates the successful long-term transition from PRIA to PRD. Entities utilizing and load-testing the PRD will help grow its capabilities for upload of industry records. Compliance with review of industry records begins one year after the date of publication of the final rule and the proposed date by which operators must comply with all of part 111 is extended one year from the proposal to three years and 90 days after

the date of publication of the final rule, as discussed in Section V.A.2.

In the NPRM, the FAA proposed to allow corporate flight departments and PAO the discretion to choose to review certain records in accordance with subpart B. Regardless of this choice, the proposed rule would have required all such operators to comply with all the reporting requirements of subpart C. For those operators, the FAA adds a provision to require those operators to comply with § 111.120 (requiring receipt of pilot consent), to ensure compliance with those protections. Corporate flight departments and PAO choosing to access the PRD for record review must comply with certain requirements regarding pilot consent, but are not required to comply fully with other provisions in subpart B.

## 2. Evaluation of Pilot Records and Limitations on Use—Section 111.105

In the NPRM, the FAA proposed to prohibit operators subject to this part from permitting an individual to begin service as a pilot prior to reviewing that pilot's records in the PRD. The records proposed to be reviewed included FAA records, records populated from current and former employers reporting records in accordance with subpart C, historical records, and NDR records. The FAA also proposed prohibiting misuse of the database, including reviewing records without pilot consent, permitting someone to access the database without proper authorization, and using pilot information for any purpose other than determining whether to hire a particular pilot.

### i. Comments Received

CAPA indicated that the FAA stated this proposal does not contain a requirement for a substantial increase in records kept by the carrier; however, CAPA noted the PRD Act and the NPRM require evaluation of records. CAPA expressed concern about safeguards to ensure the carrier performs this evaluation with a set of standard metrics. CAPA recommended the FAA require pilots' labor organizations, airline management, and the FAA to perform the evaluation jointly, as has been done in other successful collaborations, such as ASAP.

Ameristar sought clarification regarding who is responsible for evaluating a pilot's records. Ameristar also recommended that the FAA modify proposed § 111.105(a)(3) to state the requirement specifically rather than refer to 49 U.S.C. 44703(h). Ameristar also commented that proposed § 111.105(b) appears to duplicate proposed § 111.120.

A4A noted the PRIA records are available to the hiring committee for review; however, it was not apparent to A4A if the hiring committee will have access to the record. A4A urged the FAA to eliminate the hiring language from the final rule and clarify there is no change in carrier obligation to review records prior to an individual beginning service as a pilot. CAA also commented that it is unclear how hiring committees assigned to review the records and rank applications for the future will be able to access the records and conduct reviews if only one of three individuals on a committee has access to review records, especially considering the proposed user fee charged to the operator each time the record is accessed.

CAPA commented that the proposed rule indicates that the PRD is only to be used for pilot hiring purposes, but the NPRM also mentions "assisting air carriers in making informed hiring and personnel management decisions." CAPA expressed concern about this contradiction and recommended it be corrected.

A4A also noted the NPRM proposes to limit the use of PRD data to permit using the data only for the purpose of determining whether to hire a pilot. A4A argues that, while a safety benefit exists for having current information for prospective pilots, the rule should also contain a provision to allow for access to other information that would be mutually beneficial to the individual pilot and the current employer.

A4A further recommended the FAA clarify that an air carrier would have the ability to limit access to specific types of pilot records (training, drug and alcohol) with regard to what types of records particular personnel of the air carrier are or able to access about a particular pilot. A4A said the NPRM does not state explicitly that authorized users with access to a pilot's records are limited with regard to records they may be able to access about a particular pilot. A4A recommended the FAA further limit access to confidential drug and alcohol testing records in the PRD to air carrier-designated persons that administer the drug and alcohol testing program.

### ii. FAA Response

The FAA will not standardize review criteria or metrics for review of pilot records, because every employer's hiring practices are different. The PRD is simply a means of providing pilot information for hiring decisions.

The FAA is limited by statute from permitting the use of the PRD for any purpose other than an employer's

review of a pilot's records for hiring decisions. In citing the PRD's usefulness for personnel management decisions, the FAA meant that having pertinent information before allowing an individual to begin service as a pilot can aid operators in overall personnel management. As such, the FAA will not allow access to the PRD for other purposes.

Review of a pilot's record, as set forth in § 111.10, must occur before the pilot begins service as a pilot. This clarification is discussed further in Section V.A.3.

The PRD Act does not provide discretion to allow access to the PRD for record review to anyone except a person from a reviewing entity who evaluates those records prior to permitting an individual to begin service as a pilot crewmember. Whoever the responsible person delegates to access the PRD will be able to evaluate those records for the limited purpose of reviewing information relevant to hiring decisions.

This rule addresses consent and privacy concerns, especially regarding sensitive pilot records, by providing safeguards in part 111. Further, the FAA takes seriously its fulfillment of all confidentiality requirements pertaining to the release of a pilot's drug and alcohol information, in accordance with 49 CFR part 40.

The FAA amends § 111.105 to make corresponding changes to subpart B to accommodate the new alternate method of reporting records permitted by § 111.215 for certain operators. The FAA also removes the prohibition on reviewing records without pilot consent, as it was duplicative of § 111.120.

Changes to § 111.105(a)(1) and (2) split review of FAA records from industry records to facilitate use of the PRD to review all FAA records beginning 180 days from the date of publication of the final rule. Industry is already required to review these FAA records under PRIA, so this change only affects the vehicle by which they access these records.

Section 111.105(a)(4) also includes a new provision associated with § 111.215, which enables a new method of reporting for certain operators. Section 111.105(a)(4) requires persons reviewing records in accordance with subpart B to compare the records in the pilot's PAR to the list of employers provided with the pilot's consent form (See Section V.D.3.). If an employer has not uploaded records relating to that pilot but the employer appears as a former employer on the list provided by the pilot, the PRD will generate a request for the reviewing entity that goes directly to the reporting entity, by

notifying the responsible person identified on the application in § 111.15. As described further in Section V.C.4., the reviewing entity will receive a notification once any relevant records have been reported, or notification that no applicable additional records are available to report.

This proposed rule adopts the remainder of § 111.105, as proposed.

### 3. Motor Vehicle Driving Record Request—Section 111.110

In § 111.110, the FAA proposed that all operators subject to part 111, with exceptions, must query the National Driver Register (NDR) prior to permitting an individual to begin service as a pilot, to obtain and review State records on the motor vehicle driving history of the pilot. The FAA proposed that entities querying the NDR would have to keep substantiating documentation for five years to ensure that the FAA would be able to audit, if necessary, the completion of this search.

#### i. Comments Received

A4A supported that the FAA did not require motor vehicle driving record information to be entered in the PRD, stating that this approach reduced opportunity for the PRD to include inaccurate or incomplete pilot information. A4A also stated this policy is consistent with the ARC recommendation regarding NDR data. Ameristar recommended that the FAA revise § 111.110(a)(3)(i) by replacing “49 U.S.C. 30301” with “a state participating in the NDR Program,” explaining that without this change, operators have to reference the statute.

#### ii. FAA Response

Section 111.110 is adopted substantively as proposed, with minor revisions. The FAA added a reference to § 111.310 in paragraph (a)(1) of § 111.110, to note that operators required to review records that do not hold a certificate under part 119 are not required to query the NDR. PRIA specified that air carriers must review any NDR records while evaluating the other pilot records. The FAA determined that it would be appropriate not to extend the requirement to part 91 operations, consistent with the FAA’s risk-based approach for regulating entities that do not hold a part 119 certificate.

### 4. Good Faith Exception—Section 111.115

The FAA proposed to include relief from the record review requirement for operators that made a good faith effort to obtain pilot records from the PRD but

were not able to do so, due to no fault of the hiring employer. The FAA also proposed that it may notify a hiring employer if it has knowledge that a pilot’s records in the PRD might be incomplete due to dissolution of an organization or other issues with a prior employer.

#### i. Comments Received

NBAA recommended that the FAA should more clearly define “good faith” in accordance with existing PRIA language in PRIA AC120–68G, which uses the phrase “documented attempt to obtain such information.”

NBAA recommended the FAA extend the good faith exception to the requirement in § 111.115 to report historical information under § 111.205. NBAA explained many non-air carrier operators have not maintained the records that would be subject to reporting under the proposed rule. Of those non-air carrier operators that have maintained records, NBAA indicated the records may not be in a format that allows for reasonable reporting that is not unduly burdensome. NBAA expressed concern that requiring operators to report records not maintained beyond the five-year period required by PRIA will encourage operators to manufacture records, diminishing the value of any accurate historical information in the database.

Ameristar noted “good faith” effort in proposed §§ 111.115(a)(1) and 111.410(a) is not defined and is subjective, and recommended the FAA define it. Ameristar suggested a registered letter sent to the last known place of business would constitute a good faith effort and has been accepted by FAA inspectors in the past. Ameristar also recommended that the FAA state some acceptable methods of compliance in the rule to provide guidance to affected parties. As an example, Ameristar stated certified mail return receipt requested or an acknowledged email should be acceptable.

#### ii. FAA Response

Section 111.115 is adopted as proposed. The meaning of “good faith” as used in part 111 comports with the current PRIA AC120–68G, which reads:

If a pilot/applicant’s former employer has not responded after 30 calendar-days, document your attempts to obtain the PRIA records from them and contact the PRIA program manager to determine its status (see paragraph 3.5.2). If the nonresponding employer is bankrupt, out of business, or is a foreign entity, your documented attempts to contact that employer fulfill your obligation under PRIA.

For application to the PRD, the reviewing entity’s following activities would suffice to fulfill the reviewing entity’s obligation under the PRD: Query of the PRD, completion of the NDR check, review of the pilot’s employment history, submission of requests to any employers listed on the pilot’s employment history that have not indicated that all records for that pilot are already in the PRD, and submission of PRIA requests to all the employers listed on the pilot’s employment history either in the PRD or with FAA form 8060–11. When the reviewing entity waits at least 30 calendar days to receive those records and completes the PRD-related activities described above, the good faith exception would be available to the reviewing entity.

Regarding the comment to extend the good faith exception to historical record reporting, the FAA emphasizes that the good faith exception in § 111.115 is written to apply generally to persons subject to this subpart who are evaluating any records pertaining to the individual’s previous employment as a pilot and therefore would be available for any records regarding a pilot, historical or contemporaneous.

### 5. Pilot Consent and Right of Review—Section 111.120

In § 111.120, the FAA proposed to prohibit an operator reviewing records from doing so prior to receiving consent from the pilot whose records it is reviewing and proposed requiring the consent be reported to the database. The FAA also proposed requiring the hiring employer to provide the pilot with a copy of any records received from the NDR upon request.

A4A asked the FAA to expand the pilot consent process beyond the scope of just the PRD to enable receipt by an operator of a pilot certificate or medical certificate upon renewal or change, to facilitate compliance with § 121.383. The FAA determined that use of the PRD for this purpose is beyond the scope of the PRD Act with respect to purposes for which information in the PRD may be used.<sup>42</sup> Other comments regarding pilot privacy are discussed in Section IV.C.

The FAA adopts § 111.120 as proposed, with minor edits and one substantive change. The FAA amends the regulatory text such that accessing the PRD to check whether the pilot has granted consent for that operator to view the pilot’s records would not be a violation of this regulation. The activity prohibited would be actual retrieval of the records prior to receiving consent.

<sup>42</sup> 49 U.S.C. 44703(i)(9)(A).

Although such retrieval will not be possible based on the technological restrictions imposed on the PRD by the system itself, the regulation also prohibits such retrieval in the absence of pilot consent.

#### 6. FAA Records—Section 111.135

In the NPRM, the FAA proposed requiring operators to review FAA records in the PRD. Specifically, the FAA proposed that hiring employers must review: Records related to current pilot and medical certificate information, including associated type ratings and information on any limitations to those certificates and ratings; records maintained by the Administrator concerning any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under 14 CFR part 61; records related to enforcement actions resulting in a finding by the Administrator that was not subsequently overturned of a violation of 49 U.S.C. or a regulation prescribed or order issued under that title; records related to an individual acting as pilot in command or second in command during an aviation accident or incident; records related to an individual's pre-employment drug and alcohol testing history; and drug and alcohol records reported to the FAA by employers regulated under other Department of Transportation regulations for whom that individual worked as a pilot.

##### i. Comments on the FAA's Expunction Policy

The FAA formerly maintained a long-standing policy to expunge historical airman and enforcement records.<sup>43</sup> The policy provided that, generally, records of legal enforcement actions involving suspension of an airman certificate or a civil penalty against an individual were maintained by the FAA for five years before being expunged. Records were not expunged if, at the time expunction was due, one or more other legal enforcement actions were pending against the same individual. The outcome of the most recent legal enforcement action determined when the older action was expunged; for example, if a pilot's certificate was suspended in May 2000, but received another suspension in March 2005, both actions would be expunged in March 2010, if no other enforcement actions were brought against the individual

through March 2010. Actions resulting in revocations were never expunged.

Following the enactment of the PRD Act, the FAA examined whether the expunction of certain enforcement actions could continue in light of the data collection, data retention, and FOIA protection requirements of the PRD. Accordingly, FAA published a notice (76 FR 7893, February 11, 2011) temporarily suspending its expunction policy. In the NPRM, the FAA proposed to maintain its current suspension of the expunction policy. Under existing policy, the FAA expunges an enforcement record in the Enforcement Information System (EIS), and only the information identifying the subject of the enforcement action is deleted (name, address, certificate number, etc.). The PRD Act, however, obligates the FAA to "maintain all records entered into the [PRD] pertaining to an individual until the date of receipt of notification that the individual is deceased." As FAA records are part of the "records entered into the [PRD] pertaining to an individual," the FAA interprets the PRD Act to require that a pilot's records cannot be expunged until the FAA has received notice of an individual's death, or until 99 years have passed since that pilot's date of birth.

NBAA stated that the FAA's expunction policy is consistent with the Privacy Act and that the FAA must still meet the requirements of the Privacy Act despite the PRD. NBAA further commented that by maintaining information in the PRD while limiting access to qualified employers, the FAA is still able to expunge other records and databases, such as the EIS. The commenter said that closed legal enforcement actions are neither relevant nor timely after a certain length of time. NBAA endorsed the PRD ARC recommendation to reinstate the 5-year expunction policy for enforcement actions for all pilot records and the recommendation that if the FAA determines records should be maintained indefinitely as a result of the PRD Act, the records maintained in the PRD should be expunged from EIS and any other FAA recordkeeping systems that contain them.

RAA supported the proposal to maintain the current suspension of the expunction policy for all relevant EIS, CAIS, and AIDS records. The commenter also pointed to concerns expressed by the PRD ARC and asserted that the provisions of the PRD Act conflict with the Privacy Act.

##### ii. Comments on Use of Aircraft Accident and Incident Data for the Proposed Rule

CAPA expressed concern about the FAA's use of aircraft accident and incident data and suggested that the FAA's use of this data exceeds the scope of its mandate under the PRD Act. CAPA noted no current regulation or accepted practice exists in which the difficulty a pilot may have had in meeting a standard is considered in the pilot's ability to perform duties once the pilot has met that standard. CAPA argued if the objective is to identify pilots who are perceived to have "failed too often" in their attempt to meet a standard, then the standard should be the subject of additional review. CAPA also stated the evaluation standards remain equal for all applicants regardless of the training necessary to successfully complete an evaluation.

##### iii. FAA Response

The FAA adopts the provision as proposed in the NPRM with respect to the FAA's maintenance of its records in the PRD for the life of the pilot. Accordingly, the FAA is amending the records schedules for EIS records and AIDS records for this final rule. As discussed in the NPRM, the PRD Act requires pilot records to be kept "for the life of the pilot." Because a hiring employer could view a pilot's records indefinitely in the PRD, no harm results from maintaining suspension of the expunction policy with respect to records in EIS.

The FAA records within the PRD are considered copies of records maintained in the CAIS, AIDS, and EIS databases. These databases are subject to the U.S. Department of Transportation's system of records notice (SORN) entitled DOT/FAA 847, Aviation Records on Individuals (November 9, 2010, 75 FR 68849) and are made available to reviewing entities consistent with the consent provided by the pilot.

Records integrated within the individual PARs, and records that operators provide for inclusion within the PRD, are not considered to be part of an FAA system as those records, when connected to a pilot with identifying information, are not used by the Department in support of its mission. The FAA's retrieval of these records by unique identifier may only occur for administrative purposes. Rarely, the FAA may retrieve records from the system by unique identifier to respond to external criminal law investigation requests, or as part of an FAA investigation of the operator's compliance with PRD regulations. The

<sup>43</sup> The FAA adopted a policy to expunge records of certain closed legal enforcement actions against individuals. This policy applies to both airman certificate holders and other individuals, such as passengers. FAA Enforcement Records; Expunction Policy, 56 FR 55788. (Oct. 29, 1991).

FAA does not retrieve pilots' records from the PRD for FAA enforcement or investigative purposes related to the pilots themselves.

However, the Department is committed to ensuring that these sensitive records are managed in a manner consistent with the Privacy Act and the Fair Information Practice Principles, and will protect the records in accordance with the Departmental Privacy Risk Management Policy, DOT Order 1351.18 and applicable Office of Management and Budget Guidance for the protection of personally identifiable information.

The FAA also adopts the requirement for review of records related to an aviation accident or incident as proposed. The FAA explained in the NPRM that including accident and incident data in the PRD would provide a more holistic historical record of a pilot, when combined with the other records proposed to be reported to the PRD by operators that previously employed the pilot. The FAA has the authority to identify, gather, and share that data, and has determined that doing so in the PRD is consistent with the PRD Act.

The FAA enters a pilot's pre-employment and non-FAA drug and alcohol history into the PRD; however, these are not FAA records. Instead, the respective employer that conducted the test or determined the violation occurred is responsible for the records.

The FAA adopts § 111.135 with no substantive changes, but with minor edits, for clarity.

## 7. Sections Not Adopted

### i. Refusal To Hire and Release From Liability

In accordance with the statutory requirement set forth in 49 U.S.C. 44703(i), the FAA proposed permitting hiring employers to require a pilot to execute a release from liability for any claim arising from use of the PRD in accordance with the regulations. The FAA also noted that the release from liability would not apply to any improper use of the PRD, as described in the proposed regulation. The FAA also proposed to permit an air carrier or operator to refuse to hire a pilot if the pilot does not provide consent to the operator to evaluate the pilot's records or if the pilot does not execute a release from liability for any claims arising from proper use of the PRD by the operator. The proposed regulatory text also prohibited a pilot from bringing any action or proceeding against a hiring employer for a refusal to hire the pilot for any reason described in this section.

### ii. Comments Received

A4A commented that the liability release provision proposed in the NPRM in § 111.125 reflects the current and appropriate requirements, by providing a release from liability except where information is known to be false and maintained in violation of a criminal statute. Additionally, A4A contended the proposal provides reasonable protections, which the PRD Act does not require, for refusal to hire a pilot that does not provide consent or liability release requested by a carrier. A4A suggested that the FAA clarify that carriers can determine the process by which a release is obtained from the pilot and not foreclose future options.

NBAA commented that release from liability provisions apply only with respect to the entry of covered data and covered entities; in this regard, air carriers are not given immunity if they overreach by entering data that goes beyond the statute. NBAA recommended the FAA align the proposed regulation with existing laws and include additional provisions to protect employers required to submit records to the database. NBAA also expressed concern that part 111 improperly regulates the employer-employee relationship and could be inconsistent with State employment laws.

### iii. FAA Response

The FAA does not have the authority to expand the release beyond what is described explicitly by statute. Only Congress can establish statutory liability release provisions. Furthermore, Congress required the FAA to establish the PRD. The FAA is not aware of State law that would affect FAA regulation of a Federal database for pilot records.

Further, as discussed in the NPRM, the FAA recognizes that 49 CFR 40.27 prohibits employers from having their employees execute any release "with respect to any part of the drug or alcohol testing process." However, the FAA considers drug and alcohol testing records stored in the PRD to be outside the testing process for the purpose of DOT enforcement. Therefore, drug and alcohol testing records stored in and supplied by the PRD are not excluded from the liability release set forth in the statute.

The FAA does not adopt the proposed provisions. Upon further review, the FAA determined that memorializing these statutory requirements in regulation is unnecessary. Title 49 U.S.C. 44703(j) refers to "written

consent".<sup>44</sup> The FAA considers the consent requirements of §§ 111.120 and 111.310 to constitute the consent that section 44703(j) intends. A court could cite this statute in determining that a litigant does not have standing to bring a claim, but codifying a regulation to further memorialize the provision is not necessary.

### C. Subpart C—Reporting of Records by Operators

#### 1. Applicability—Section 111.200

In the NPRM, the FAA proposed that certain operators would be required to report records to the PRD, in accordance with the statute. The FAA adopts this section substantively as proposed, with edits for consistency with other parts of the regulatory text throughout this section and with additional text.

In this section, the FAA adds compliance dates for when reporting of records to the PRD begins. The FAA expects to be able to accept industry records beginning June 10, 2022. As such, operators currently engaging in operations, or that initiate operations prior to June 10, 2022, must begin reporting new records described by § 111.205(b)(1) on June 10, 2022. Operators initiating operations after that date must begin complying with the PRD within 30 days of receiving their operations specifications. Historical record reporting falls on a different timeline and the FAA states in this section that the schedule for historical record reporting is set forth in § 111.255. Comments regarding the compliance timeline for reporting historical records are found in Section V.E.

#### 2. Reporting Requirements—Section 111.205

In § 111.205, the FAA proposed general requirements for compliance with subpart C. The proposal required operators subject to part 111 to report new records about a pilot it employs as well as historical records about a pilot currently or previously employed. Proposed § 111.205 would prohibit inclusion of the information not permitted to be entered into the PRD as described in § 111.245.

The FAA amends the proposal concerning § 111.205 to add the PRD date of hire to the list of information that an operator is required to enter about a pilot. Otherwise, this section is adopted substantively as proposed.

<sup>44</sup> Specifically, 49 U.S.C. 44703(j)(4)(A) states that an "air carrier may refuse to hire an individual as a pilot if the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute the release from liability requested under subsection (h)(2)(B) or (i)(3)(B)."

Comments relating to the applicability of the reporting requirements of part 111 are discussed primarily in Section IV.B.

### 3. Format for Reporting Information—Section 111.210

In the NPRM, the FAA proposed that operators would have to report information to the PRD in a form and manner prescribed by the Administrator.

#### i. Comments Received

A4A took issue with the fact that the proposed rule creates a database of pilot record summaries, not of pilot records. A4A said summaries are contrary to the PRD statute, which requires an electronic database for records “that are maintained by the air carrier.” A4A added that this is an arbitrary and capricious reversal of the FAA’s own interpretation of what constitutes a “record” and substantially increases the costs of the proposed regulation while reducing the quality and quantity of information available in the PRD as compared to the PRIA record exchange program. A4A was especially concerned about the proposed requirement to input summaries of historical records, rather than scans of the records themselves. A4A stated that the FAA should provide the option to upload images of entire documents rather than relying on summaries.

A4A contends that the PRD does not provide potential employers with the level of comprehensive information Congress intended and that PRIA provides currently. A4A noted that under PRIA, a hiring carrier would receive the pilot’s record and could review any incidents demonstrating that a pilot has difficulty with crew resource management, even if the final disciplinary action is removed from the record via settlement. Under the proposed rule, however, that information would not be captured in the PRD because if a settlement overturns a disciplinary action, the entire record related to that action would be excluded from the PRD. Moreover, A4A noted, once PRIA sunsets, those records will be permanently inaccessible to potential employers.

A4A noted the NPRM provides no technical information on how an employer must report extensive pilot records into the PRD; therefore, the public cannot provide precise information on the potential impact of this regulation without having the technical requirements to report information into the PRD. A4A recommended that the FAA consider offering both XML and JSON formats as

standards for bulk data transfer and engage carrier technical representatives. A4A further recommended that the FAA provide carrier representatives with information on the lessons learned by the Federal Motor Carrier Safety Administration in the Commercial Driver’s License Drug and Alcohol Clearinghouse. RAA requested that a guide to XML be provided to PRD users at the close of the comment period, or at the earliest possible time. A4A also asked for technical clarification on how bulk records should be uploaded to the PRD.

Ameristar and Atlas Air also expressed concerns about the format for uploading records, stating that it would affect the timing and cost of compliance. Ameristar notes that the definition of “report to the PRD” is open-ended.

The National Air Transportation Association (NATA) recommended that the FAA extend the historical period for data transmission and allow the uploading of original documents. NATA stated that only 12% of carriers are using electronic pilot records, and the significant majority of recordkeeping systems do not have the ability to create an XML program to sweep up the data fields for transmission. NATA stated that it expects a large number of part 135 carriers to use manual entry, and that rushing could cause unnecessary errors that would be difficult to correct and only discovered in pilot disputes.

Ameristar stated the PRD should allow text submissions of historical records, noting the wide availability of the ASCII format. The commenter also recommended all historical records be allowed in the format in which the carrier maintained those records.

In the NPRM, the FAA requested comments on five questions related to the input of historical records.<sup>45</sup> RAA

<sup>45</sup> 85 FR 17678 (March 30, 2020). The questions included:

1. What level of detail (e.g., training completion dates or the pilot’s entire training record including each activity/task and outcome) do operators keep for historical pilot records dating back to August 1, 2005 and how accurately do the data requirements outlined in Table 3 reflect that level of detail?

2. Are air carriers or operators maintaining other relevant records used by an air carrier or operator in making a hiring decision that the FAA has not considered or not chosen to include as a historic data requirement in this proposal?

3. What amount of effort do employers perceive will be involved in reviewing the historic data and structuring it into an XML format? The FAA would also welcome information from any employers that do not intend to use the back-end XML solution?

4. How quickly do air carriers and other operators believe they will be able to migrate their PRIA records into the PRD?

5. Would it be helpful from either a pilot or a hiring employer’s perspective to include a text box (with a limited character count) for a pilot to be able to provide a narrative explanation of further

commented that it is difficult to answer Question 3 until an example of the proposed XML data transfer format is available for testing. Also responding to Question 3, CAPA stated there should be an opportunity for the public to make additional comments if the FAA chooses to collect any type of historical record not previously mentioned.

In response to Question 5, RAA stated that a text box could be useful in providing narrative explanations for historical records, but risks providing unneeded information to the receiving carrier. RAA suggested that the FAA could limit this through a drop-down menu. Also responding to Question 5, CAPA stated that this question is confusing because under the NPRM a pilot would already have an opportunity to correct inaccurate data. CAPA further stated that the FAA should clarify its intention, and also asked whether there would be one data package to correct the entire package, one per section, or some other arrangement.

The Families of Continental Flight 3407 emphasized that the database will only be as effective as the quality of the data entered into it and that there will need to be a continuous quality control process in place as the database is put into operation. These commenters called on the FAA and all stakeholders to make their best possible effort in this regard.

A4A also said the final rule should clarify the requirement for most records to be reported “within 30 days” of the event, and that the rule does not prohibit submission of information after 30 days.

#### ii. FAA Response

Section 111.210 is adopted as proposed. The FAA provides a description of an initial means of compliance for the format for reporting information in AC 20–68J accompanying this rule.

The NPRM proposed that operators summarize the information from a pilot’s record, rather than submitting the actual records to the PRD. Table 3 of the NPRM outlined the data elements necessary to include in the summary. The FAA acknowledged that many operators have maintained records in accordance with PRIA in varying degrees of detail, so the FAA’s intent with requiring submission of a summary rather than an original record was to create a standardized process and best practice for obtaining the relevant information. Further, the NPRM stated that clearly defining the specific data

information concerning a historical record? Would this also be helpful for present-day records?



elements in this proposed rule would enable reporting entities to refine the information included in the PRD that hiring operators find most useful for hiring decisions, rather than entering all data maintained on an individual pilot throughout his or her career. Lastly, requiring records to be entered in a standardized format is consistent with NTSB Recommendations A-10-17 and A-10-19.

The FAA confirms in this action that the summary approach would be used for current, future, and historical records. The FAA reaffirms the NPRM discussion on the data elements and information required for the summaries which emphasized that the summary approach was taken specifically to improve the quality of the information submitted to the PRD. The FAA notes, with respect to A4A's comment regarding subsequently overturned disciplinary actions, that the PRD Act and PRIA share identical language with respect to excluding disciplinary actions that were subsequently overturned.

While the PRD Act requires that air carriers and certain other persons report information "to the Administrator promptly for entry into the database" with regard to any individual used as a pilot in their operations, the PRD Act leaves the FAA discretion to determine the means by which the information is to be reported to the FAA for inclusion in the PRD. The FAA further acknowledged in the NPRM that requiring summaries rather than records differed from the current process under PRIA, stating that unlike the current process under PRIA, the proposed requirements ensure the standardized collection of and access to safety data regarding disciplinary actions by clearly defining the type of event, the type of disciplinary action, timeframes for data entry, and specific data that must be reported to the PRD for evaluation by a future employer. As discussed in the NPRM, the FAA's role concerning PRIA and PRD are vastly different. The provisions of PRIA were self-implementing and the FAA's role in the PRIA process limited. The FAA did not develop implementing regulations for PRIA. The PRIA process generally involved only three parties for industry records: The potential employer, the past employer, and the pilot-applicant. In contrast, the PRD Act requires the Administrator to promulgate regulations to establish an electronic pilot records database containing records from the FAA and records maintained by air carriers and other operators that employ pilots.

Limiting the data elements available to hiring employers is critical because

the PRD requires the FAA to ensure pilot privacy is protected. Because the Administrator cannot effectively review for quality control every record that an operator may upload to the PRD, the FAA proposed requiring standardized formats for such records. By using such formats, the PRD will ensure that specific data points are validated at the time of record upload. Accordingly, the FAA has used its discretion to determine that, specific to the PRD and its broad coverage of records and mandate to protect pilot privacy, a summary of that information rather than wholesale submission of the underlying records provides the most efficient, standardized, and succinct vehicle to meet Congressional intent concerning the information reported to the PRD and the privacy protections the FAA must afford pilots. Therefore, the FAA disagrees with the commenters who indicated the PRD should contain images or scans of the original records.

The FAA will make available two primary methods for entering records into the PRD: Manual entry and an electronic record upload. The manual method will be accessed via the PRD website. The reporting entity will be presented with a form to complete after selecting the pilot and what type of record is to be entered. The second method of loading records will be via an electronic transfer using a data format such as XML. The FAA originally considered allowing a large text block to be uploaded for historical records in the interest of expediting data upload. However, after additional consideration, such a block would make the record far less useful to a reviewing entity. If the information cannot be properly categorized, identified, and read by a person to understand the salient facts of the record, there is diminished value for providing the record to the PRD. A reporting entity may use either or both methods, as long as the entity does not load the same record via both methods.

The manual method will be available for use when the requirement to enter records becomes effective. This will allow reporting entities to begin entering records pursuant to the schedule described in the regulation. Shortly after the final rule is published, the FAA will begin finalizing the electronic record reporting format and keep industry informed of those efforts. The FAA expects to develop a format that will accommodate the most efficient industry adoption. As the PRD system matures and recordkeeping systems advance, electronic transfer may become the primary method of loading records into the PRD for many reporting entities. Detailed instructions

for using both methods will be described in AC 120-68J and other PRD user guides.

The FAA confirms that while reporting records beyond the 30-day timeline may be possible technically, doing so is inconsistent with the regulatory requirement to report records within 30 days when reporting in accordance with § 111.215(a).

The FAA removed the proposed regulatory definition of "report to the PRD" because the requirement is inherent in the regulation itself. By following the requirements of part 111, the operator is reporting to the PRD.

#### 4. Method of Reporting—Section 111.215

In the NPRM, the FAA proposed that all records would be uploaded within 30 days of record creation. As mentioned previously in Section IV.C, this rule adds a method of reporting records under subpart B for certain operators. New § 111.215 now offers the option for some operators to report certain pilot records to the database upon request from a hiring operator. The FAA considered comments regarding the number of pilots who will transition from corporate flight departments, air tour operations, or PAO ("PAC operators") to employment with a reviewing entity, and determined that many pilots will not make that transition or not change employers during the course of their careers. The FAA recognizes that many pilots view employment with the PAC operators as a career destination, not a gateway to service with a reviewing entity.

PAC operators may upload records for pilots they employ upon request instead of reporting all records automatically. The request mechanism will be built into the PRD as an automatic function. This upload-upon-request framework is subject to three exceptions. First, reporting upon request is not applicable for air tour operators' drug and alcohol records subject to 14 CFR part 120. Those records are subject to the reporting timeline for that section and must be reported contemporaneous with the receipt of each such record. Second, PAC operators must report separation from employment records which reflect termination of the pilot's employment, either due to pilot performance or due to professional disqualification, to the database within 30 days of record creation. Third, PAC operators must report disciplinary action records to the database where the outcome is a suspension from piloting an aircraft for any amount of time.

The FAA understands that different employers have different disciplinary



programs and the same action may be referred to with different terminology. The threshold consideration for determining whether an operator must report a disciplinary action record upon creation of the record is whether the pilot was no longer permitted for any period of time to pilot an aircraft during flight operations. The FAA considers such separation from employment and disciplinary actions as among the most significant events for a reviewing entity to consider when determining whether to employ a pilot. Therefore, the burden imposed by requiring PAC operators to report a certain record upon receipt or creation of the record will ensure reviewing entities have the most important records regardless of whether a pilot, in violation of the regulation, omits operators from his or her list of previous employers.

Aside from the three exceptions discussed, this rule requires the reporting of any remaining records held by a PAC operator only upon request from a hiring employer. To ensure no gap exists in pilot employment history, the FAA revises § 111.310 to require pilots to update their employment history dating back five years at the time of granting consent to the operator. Under § 111.105, the hiring employer must compare this history against the available records; if the database indicates that further records are available, the hiring operator will be able to generate a request through the PRD to the prior or current employer for upload. If a request is sent to a pilot's former employer and that former employer has no further records about an individual pilot, the former employer should report that no further records are available. The FAA envisions that even if no other records exist for an individual pilot (because the operator did not keep any training records, as discussed in Section V.C or because the pilot was not ever subject to disciplinary action) a separation from employment date might still exist for that pilot. If the separation from employment record was the result of a termination, the record would already be uploaded contemporaneously in the PRD; however, if the separation was not the result of a termination, a last-in-time date should still be entered into the PRD upon request, in order to populate the database with information about a pilot's employment history.

PAC operators are also required to maintain any records reserved for reporting upon request for five years or until otherwise reported to the PRD to ensure they are available for review by a hiring employer. This section includes a requirement that these operators and

entities continue to report records they would have furnished in accordance with a PRIA request to the PRD upon receipt of that request. This provision addresses any gap that would occur for records held by an operator complying with § 111.215(b) and reporting records on request. That group of operators is the same as those not required to report historical records. There are approximately three years of records that such operators would have continued to provide under PRIA but for its sunset. This provision requires that those operators upload those records to the PRD in the event a request is received.

For records required to be reported contemporaneously under § 111.215(a), both disciplinary action records and separation from employment records must be reported within 30 days of the date the record would be considered "final" by the operator as noted in § 111.230 and 111.235, which contain the requirements for reporting such records.

#### 5. Drug and Alcohol Testing Records—Section 111.220

As proposed in the NPRM, operators that must comply with 14 CFR part 120 are required to report certain records concerning drug testing and alcohol misuse to the PRD. Operators must report all drug test results verified positive by a Medical Review Officer (MRO), any alcohol test result with a confirmed breath alcohol concentration of 0.04 or greater, any refusal to submit to drug or alcohol testing, any record pertaining to an occurrence of on-duty alcohol use, pre-duty alcohol use, or alcohol use following an accident, all return-to-duty drug and alcohol test results, and all follow-up drug and alcohol test results. This rule adopts the requirement to report such records to the PRD, as proposed; however, the FAA has updated some language within this section for clarity.

##### i. Comments Received

The FAA received comments on the proposed requirement to report drug and alcohol testing records to the PRD from NTSB, Ameristar, RAA, NATA, and A4A.

While commenters expressed support for the proposed inclusion of records regarding a pilot's drug and alcohol violation history in the PRD, some commenters requested clarification on which records they must report. For example, commenters asked whether they must report non-DOT testing records and whether they must report all negative and non-negative testing records for all types of tests.

Commenters also sought clarification on the proposal to include all negative and non-negative return-to-duty test results in the PRD, as commenters read the text as excluding this requirement. Some commenters remarked that the inclusion of negative return-to-duty test results has little value for an operator's hiring determination. Some commenters stated the drug and alcohol testing regulations do not require an employer to maintain negative return-to-duty tests for longer than one year.

Commenters requested clarification on the regulatory references to recordkeeping requirements in this section, stating that some were specific to requirements of the MRO rather than the employer. One commenter asked whether the retention periods require expunging the records maintained in the PRD in accordance with 14 CFR part 120, and if so, how to do this.

A4A added that the FAA already has measures to prevent an air carrier from hiring an individual with drug or alcohol violations, and that providing this information would be duplicative of FAA records that already show such violations. Specifically, A4A referenced the requirement (under 14 CFR part 120) to report certain drug and alcohol violations to the Federal Air Surgeon and the potential for resulting certificate actions. A4A also stated that a positive return-to-duty test would permanently disqualify a pilot from holding an FAA pilot certificate, while a pilot that is already performing pilot functions for another air carrier would already have been subject to the return-to-duty requirement and received a negative return-to-duty test, so those negative outcomes would already be known to an operator.

##### ii. FAA Response

In the NPRM, the FAA included the requirement to report to the PRD substituted or adulterated drug test results with verified positive drug test results. To harmonize the final rule with 49 CFR 40.191(b), the FAA corrects this reference by including these results in the reporting requirement of § 111.220(a)(1)(ii) as refusals to submit to testing.

The FAA proposed to require operators to report all return-to-duty and follow-up test results to the PRD, as the review of return-to-duty and follow-up test results are critical to an operator's hiring decision. The FAA believes excluding these tests from PRD would provide an incomplete picture of a pilot's drug and alcohol history to employers making a hiring decision about a known violator. Return-to-duty and follow-up tests are directly related

to an individual's rehabilitation process, and as described in the NPRM, including these records will allow a hiring employer to see more specifically where an individual is in their treatment and return-to-duty process. This information is critical for an operator's hiring decision, as a pilot cannot perform flight crewmember duties for an operator under part 121, part 135, or § 91.147 until the return-to-duty process is complete.<sup>46</sup>

All pilot records (including documentation of return-to-duty testing) must be maintained for at least 5 years under 49 CFR 40.333(a)(1) and 49 U.S.C. 44703(h)(4). Therefore, operators will have maintained these records for at least that amount of time. The PRD Act also specifically requires inclusion of records kept under PRIA as of the date of enactment of the statute, which would include drug and alcohol testing records from that time period as well. This rule contains revised regulatory text to note the requirement to report all negative and non-negative drug and alcohol return-to-duty test results to the PRD.

In the NPRM, the FAA proposed that records related to on-duty use, pre-duty use, and use following an accident would be included in a pilot's disciplinary action record in the PRD. The NPRM also proposed to require an employer to enter a detailed summary of the violation. Upon further consideration, the FAA determined records of on-duty use, pre-duty use, and use following an accident must be included in the pilot's drug and alcohol history as alcohol misuse violations under part 120 of this chapter instead of the pilot's disciplinary action record. This will ensure an accurate display of a pilot's drug and alcohol history and will allow a hiring employer to determine whether a pilot is professionally qualified to perform flight crewmember duties. When entering alcohol misuse violations that do not include a test result in the PRD, the employer will need to input the report type and date of occurrence. Because a hiring employer that intends to hire an airman must obtain records of the occurrence from the previous employer in accordance with part 40, no further explanation of the violation is necessary in the PRD.

This rule also adds regulatory citations as they relate to drug and alcohol recordkeeping requirements, ensuring the rule references 14 CFR part 120 and 49 CFR part 40 for a regulated employer and MRO, where appropriate. For example, in many cases, only the

employer has the information, such as alcohol test results and in refusal determinations without a test result.

The process required by part 40 for an employer to obtain records covered by that part will still exist, and is in addition to the records available in the PRD. If an operator discovers a drug or alcohol violation record in an airman's PAR and decides to hire the airman, the operator must obtain information that the airman has subsequently complied with the return-to-duty requirements of 49 CFR part 40, subpart O, in accordance with 49 CFR 40.25(e). In accordance with the drug and alcohol testing regulations, a hiring employer cannot hire an airman to perform a safety-sensitive function if the employer is aware that the individual has violated the testing regulations and cannot obtain documentation that the individual has met the return-to-duty requirements of part 40, subpart O or part 120.

Because the PRD will not provide a hiring operator with return-to-duty documentation or actual test results, the operator must obtain documentation of the airman's successful completion of the DOT return-to-duty requirements (including initial and follow-up reports from the Substance Abuse Professional (SAP), the follow-up testing plan, and results for any return-to-duty and follow-up tests). The airman must provide the records that the airman is authorized to have, or the operator must obtain the airman's specific release of information consent to the former employer where the violation occurred, as required by 49 CFR 40.321 and formerly under the PRIA. AC 120-68J includes a sample release form (FAA Form 8060-12) to aid a hiring operator with requesting an airman's drug and alcohol records from the airman's previous employer(s).

Lastly, in response to A4A's comment that the FAA already has measures to prevent a reviewing entity from hiring an individual with a drug or alcohol violation, the PRD Act requires the FAA to include drug and alcohol records in the PRD as records maintained by the reporting entity.<sup>47</sup> The FAA does not have discretion to adjust the requirement. Further, drug and alcohol violation reports sent to the Federal Air Surgeon are not indefinitely available to the FAA. For example, if the FAA does not proceed with enforcement action, the record is expunged and is no longer part of the individual's violation history in the FAA's enforcement system (EIS). The violation still stands and the individual still needs to go through the

return-to-duty process, but there is no certificate action detected. In response to the statement regarding permanent disqualification, the FAA asserts that specific qualifications must be met to trigger the permanent disqualification provisions under §§ 120.111(e) and 120.221(b). A verified positive return-to-duty test will not trigger these provisions automatically.

#### 6. Training, Qualification, and Proficiency Records—Section 111.225

In the NPRM, the FAA proposed to require all operators complying with subpart C of part 111 to provide training, qualification, and proficiency records to the PRD. Under the proposed rule, employers would enter records maintained in accordance with established FAA regulations related to pilot training, qualifications, and proficiency events. In addition, the FAA proposed to require employers to enter records demonstrating an individual's compliance with FAA or employer-required "training, checking, testing, currency, proficiency, or other events related to pilot performance" that may be kept by covered employers.

As proposed in § 111.220(c), the minimum data required to be reported by all populations included the date of the event, aircraft type, duty position (PIC or SIC), training program approval part and subpart, the crewmember training or qualification curriculum and category as reflected in the FAA-approved or employer-mandated training program, the result of the action (satisfactory or unsatisfactory), and limited comments from a check pilot, if appropriate.<sup>48</sup> The FAA also proposed to exclude certain records from the reporting requirements. Specifically, under the proposal, the PRD would not include records related to flight time, duty time, and rest time; records demonstrating compliance with physical examination requirements or any other protected medical records; records documenting aeronautical experience; and records identified in § 111.245, the provision that identifies certain voluntarily-submitted safety program records.

NBAA, ALPA, CAPA, A4A, RAA, CAA, the Families of Continental Flight 3407, Cummins, Inc., Ameristar, Atlas Air, and many individuals commented on the proposed requirement to report training, qualification, and proficiency records. Most of these comments addressed the proposed requirement to include check pilot comments from

<sup>48</sup> The FAA uses the term "check pilot" throughout part 111 and this preamble to refer also to the duties and responsibilities of a check airman.

<sup>46</sup> See 49 CFR part 40, subpart O.

<sup>47</sup> 49 U.S.C. 44703(i)(2)(B)(i)(II)-(III).

training events, to which some commenters objected. Commenters also addressed the reporting of records related to recurrent training, continuing qualification training under an Advanced Qualification Program (AQP), the reporting of aeronautical experience records, the lack of standardization in training records, and other issues related to the reporting of training records.

i. Comments Received Regarding Inclusion of Check Pilot Comments

NBAA, ALPA, CAPA, RAA, CAE, Cummins, Inc., and several individual commenters recommended that the FAA remove the proposed requirement to report check pilot comments from training events.<sup>49</sup> These commenters contended that requiring the reporting of check pilot comments would have a chilling effect on training and safety. Commenters also noted the subjective nature of such comments and highlighted the effect such comments could have on a pilot's career.

Ameristar suggested the FAA publish an advisory circular or appendix to the rule to detail how instructors and check airman should write comments regarding a pilot's performance to achieve objectivity. Ameristar provided examples of such comments.

Noting that unflattering check or instructor pilot comments may cost pilots future job opportunities and leave check pilots or their employers open to liability, NBAA said the statement of non-liability should specifically protect the check or instructor pilot against civil, administrative, and criminal claims. NATA also requested clarification on the liability protections for current and past employers entering required data into the PRD, not just new employers.

A4A recommended the FAA clarify that comments on pilot performance should only be entered into the PRD when made by a check pilot during evaluation events or during validation events in AQP continuing qualification (CQ).

ii. FAA Response

The FAA revised parts of this section for clarity, as set forth in the discussion that follows, and re-numbered this section, which the NPRM had proposed to designate as § 111.220.

The FAA is mindful of all comments received on the inclusion of check pilot

comments in the PRD. As discussed in the NPRM, the FAA is required by statute<sup>50</sup> to include in the PRD records pertaining to "the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman." Because the PRD is intended to improve the information sharing that occurs under PRIA, the FAA is careful not to reduce the benefits provided and instead to improve upon the PRIA system. Under PRIA, training, qualification, and proficiency records are provided wholesale to requesting operators. The FAA does not expect employers would redact portions of the particular records and provide the records in their entirety to the requester. Thus, under PRIA, hiring operators are able to see check pilots' comments in the record. These comments will provide a hiring operator information that helps in understanding the salient details of a qualification or proficiency event. The FAA removed "subpart K" from § 111.225 as adopted because the FAA expects that any comments by the person administering a proficiency check conducted under § 61.58 will also be reported to the PRD to the extent an operator is keeping records related to that section. This approach is consistent with the reporting required for other specified proficiency events administered by check pilots or evaluators such as for parts 121, 135, or 125. If the check required by § 61.58 is unsatisfactory, the tasks or maneuvers not completed satisfactorily will also be entered if maintained by the covered employer.

Some commenters suggested the FAA provide guidance regarding how the check pilots should draft comments. The FAA has not determined that comments from check pilots are generally problematic or that additional industry guidance is needed. Check pilots have entered comments as needed for years and have been guided by their approved training programs regarding what is appropriate to enter as a comment in a record. The requirement to report comments into the PRD does not alter existing processes that operators use when creating the original record.

A commenter expressed concern about inclusion of comments from instructors in the PRD. As described in the NPRM, the PRD will not include instructor comments but will instead collect records relating to the completion of training curricula. The FAA provides substantial supporting

guidance, such as AC 120-68J and the PRD record entry functionality itself, to designate which records may include check pilot comments when entered into the PRD.

Additionally, to the extent commenters have raised concerns about liability, this rule does not extend the statutory liability protection to cover inclusion of check pilot comments because this liability protection is already provided via a specific provision in the PRD Act itself.

iii. Comments Received Regarding Inclusion of AQP Validation Events

The NTSB, A4A, RAA, CAA, and the Families of Continental Flight 3407 sought clarification on which records from training programs approved in accordance with an AQP must be reported to the PRD.

The NTSB asserted that the Draft PRD AC<sup>51</sup> states that operators using a training program approved in accordance with an AQP would be required to enter into the PRD specific information about a pilot's qualification items completed through the AQP, but the language in the NPRM is not clear in this regard. The NTSB said the FAA should ensure the final rule contains language that specifies which AQP items, including but not limited to those referenced in the Draft PRD AC, must be reported to the PRD. The NTSB also said it does not support the proposal to exclude AQP "validation events" from the PRD reporting requirement, stating that it recognizes that "many validation events . . . are used to improve and add quality to the training program," but several AQP validation events contain evaluation elements that assess an individual's performance and proficiency (using a rating or score) and must be administered by an evaluator. The NTSB opined that the inclusion of the records of such events in the PRD is consistent with the overall intent of the NPRM. The NTSB recommended that the FAA ensure that the final rule requires PRD reporting for AQP evaluation elements that assess an individual's performance and proficiency, including but not limited to maneuver validations (MV), line operational evaluations (LOE), and line checks. The Families of Continental Flight 3407 concurred with the NTSB's comment, noted that it is critical to include AQP "validation events" that assess an individual's performance and

<sup>49</sup> For purposes of this rule and as reflected in the database, the FAA is using the term "training event" broadly to include training activity, checking and evaluation activities, and operating experience under the supervision of a check airman or evaluator.

<sup>50</sup> 49 U.S.C. 44703(i)(2)(B)(ii)(I).

<sup>51</sup> The draft PRD AC published along with the NPRM on March 30, 2020, and is available in the docket at <https://www.regulations.gov/document?D=FAA-2020-0246-0006>. The final PRD AC 120-68J will be available in the rulemaking docket.

proficiency to ensure that the overall safety intent of the PRD is met. The commenter urged the FAA to close these AQP-related loopholes as it finalizes the proposed rule.

A4A noted the FAA addressed reasons not to include AQP validations and validation comments in both the preamble (at 85 FR 17680) and the Draft PRD AC (at paragraph 10.1.2.5). A4A asserted those negative effects are limited to qualification courses. A4A went on to say the industry believes there is value in including CQ validations and comments in the PRD.

CAA, A4A, and RAA sought clarification on how continuing qualification training under AQP should be accounted for in the PRD. The commenters noted that many AQPs have a cycle of reviewing all required task elements in 24-month or 36-month increments, during which pilots will attend several simulator training sessions that conclude in either an MV or LOE. The commenters asked FAA to clarify whether continuing qualification MV under subpart Y and the training session associated with § 121.441(a)(1)(ii)(B) “simulator course training” should be reported to the PRD.

Commenters recommended the FAA name the events that must be uploaded to the PRD. A4A and RAA listed the events they believe should be uploaded to the PRD. For subpart Y of part 121 (Advanced Qualification Program), the commenters stated that the following should be uploaded: (1) All LOEs associated with an initial, transition, upgrade, differences or a continuing qualification training course; and (2) all MVs associated with a continuing qualification course. For subparts N (Training Program) and O (Crewmember Qualifications) of part 121, the commenters stated that the following should be uploaded: (1) All proficiency checks for both initial training and recurrent training; and (2) all simulator courses of training under subpart O. The commenters said that, if the FAA does not believe this level of detail is appropriate for the rule, it should develop either an AC or Order to provide standardization.

In contrast, ALPA said the FAA’s proposed exclusion of validation events (in an AQP) is an important safeguard of the efficacy of highly successful training programs and should be clearly stated in the regulations. Commenters believed that reporting validation events to the PRD would stifle free and open feedback from those administering the validation event. They also indicated that validation events are intended to provide feedback regarding the effectiveness of the training program

and not necessarily the proficiency of the pilot.

#### iv. FAA Response

The FAA seeks to ensure that records entered into the PRD based on AQP provide a hiring operator with the same benefit as records reported under non-AQP programs. Overall, AQP validation events that are conducted by an evaluator involve an assessment of a pilot’s proficiency and should be made available to a hiring operator. While AQP validation events provide valuable feedback regarding the effectiveness of the training program, they are also designed to ensure the pilot demonstrates an appropriate level of proficiency. As such, these AQP validation activities constitute proficiency events under the language in § 111.225(a), and the records (including evaluator comments) associated with these AQP validation activities must be included in the database.

After considering the comments received, the FAA determined that revision of the requirements concerning records of AQP validation events is appropriate. Some validation events, such as procedures validation (PV) conducted by an instructor in a qualification curriculum, do not constitute a proficiency event. Therefore, such validation events will not be reported individually in the database, but rather, will be reflected in the general reporting requirement indicating the pilot has completed the qualification curriculum. However, as noted, a PV event differs from those events conducted by AQP evaluators, such as an MV under a continuing qualification curriculum, which could provide a hiring operator with very meaningful information regarding an assessment of the pilot’s proficiency. This is particularly true in many CQ curricula. Many operators utilizing AQP programs will use a rotating schedule where the pilots complete an MV in one cycle and then an LOE in the next. Although they constitute two different types of events, they are both evaluations of pilot proficiency and thus must be reported to the PRD with the evaluator’s comments.

AC120–68J accompanying this rule will specify exactly which AQP validation events constitute “proficiency events” under § 111.225(a) and thus must be reported to the PRD. The AC will also describe which other AQP related records must be included, which would generally be completion of training events. The exact training record elements expected to be reported vary from employer to employer and

may require updates over time, within the requirements specified by § 111.225. The FAA will identify in the AC the record elements each employer will enter based on the regulatory requirement as compared to various training programs and curricula.

Commenters expressed both support for and opposition to including comments related to AQP validation events. Some AQP validation events that occur in various curricula are used to ensure a pilot has completed a knowledge or skill block before beginning the next. However, some AQP validation events provide a more holistic review of a pilot’s proficiency than other events. The FAA would consider the latter AQP validation events conducted by evaluators, such as MVs and LOEs, to be proficiency events; as a result, these AQP validation events could have evaluator comments entered in the original record. These comments will offer the same benefit to a reviewing entity as conventional check pilot comments.

As a result, the final rule includes references to “evaluators”—a term generally used in AQP—in addition to “check pilots,” a term generally used in subparts N and O of part 121 as well as in part 135. Some events reported to the PRD would be subject to evaluation by a person other than a check pilot. These comments will be as relevant to the proficiency of a pilot as those comments made by check airmen under traditional training programs. The PRD Act does not limit the inclusion of comments only concerning the technical qualifications of a check pilot, and the FAA finds the inclusion of these comments consistent with the intent of the statute.

#### v. Comments Regarding Aeronautical Experience

NBAA and two individuals commented on language in both the draft AC and the NPRM requiring reporting of a pilot’s aeronautical experience, flight time, and flight maneuvers performed to maintain privileges of their certificate. The individual commenter noted inconsistent statements between proposed § 111.220(b)(3), which says no person may report records documenting aeronautical experience, and § 111.220(a)(2), which requires operators to report records related to currency and proficiency. The commenters noted these reporting requirements will result in operators needing to log every flight hour, instrument approach, and landing in the PRD. NBAA asked the FAA to remove

reporting requirements related to § 61.57.

Another individual commenter expressed confusion over what it interpreted as a proposal not to require the reporting of aeronautical experience. The commenter argued that the entire purpose of the proposed rule is to ensure that appropriate aeronautical experience exists when hiring pilots.

#### vi. FAA Response

Regarding the exclusion of “aeronautical experience” in the reporting requirements proposed in the NPRM, the FAA recognizes that aeronautical experience, which is defined only in part 61, is used to describe the information that pilots must log to demonstrate compliance with the requirements of part 61. As defined in § 61.1, aeronautical experience means “pilot time<sup>52</sup> obtained in an aircraft, flight simulator, or flight training device for meeting the appropriate training and flight time requirements for an airman certificate, rating, flight review, or recency of flight experience requirements” of part 61. The FAA acknowledges that using the term “aeronautical experience” in part 111 could be confusing.

In the final rule, the FAA replaces “aeronautical experience” in the exclusion with “recent flight experience.” Although recent flight experience is a “qualification”<sup>53</sup> requirement like training and checking events, the final rule excludes these requirements from the reporting requirements in part 111. The FAA notes that the regulations generally identify this type of event in section headings. For example, § 135.247 sets forth recent experience requirements including takeoffs and landings that must be performed within a certain period of time before conducting an operation. Under § 111.225(b), these records are excluded from the reporting requirements but remain recordkeeping requirements for operators.

#### vii. Comments Regarding the Lack of Standardization in Training Records

Several commenters addressed the lack of industry standards in training records. Noting that training data is currently stored in company-specific formats that can be challenging to

decipher, an individual commenter suggested the FAA create an industry standard reporting format for the PRD. The commenter said the PRD should be easily understandable by anyone accessing it and that, without standardization, it could be difficult to discern which type of training event occurred and what was covered in each event. A4A recommended that the FAA work with carriers to discuss how events reported from one carrier can be interpreted by other carriers. CAA recommended the FAA provide additional guidance material to ensure standardization of all training records.

CAA, A4A, and RAA recommended that the FAA create a PRD working group to help standardize the form and manner of the records to be recorded in the PRD.

The General Aviation Manufacturers Association (GAMA) commented that the FAA’s attempt to create a statistical database disregards the fact that the PRD will be populated with statistically unrelated information.

Pointing to paragraph 10.1.1.1.2 of Draft AC 111, ALPA said it agrees with the FAA’s proposed use of a “Standardized Training Record Input” with a requirement to identify consistently each “Action/Event,” in reference to the primary training categories from the specific curriculum segments in the carrier’s FAA-approved training program.

#### viii. FAA Response

Some variation might exist in interpreting various operators’ training events. This is a particularly notable challenge for record-sharing under PRIA, concerning the original employer record. As a result, the FAA identified standardized data elements for entries. Using a standardized input will provide a consistent format as part of the PRD airman report. Providing the uniform report, regardless of the format used by a reporting entity, will allow reviewing entities to interpret the information accurately and efficiently. For example, when a reporting entity reports a proficiency check, it will select the regulatory basis for the check, such as a Part 121 subparts N and O based curriculum, from a drop down list. This selection will determine which data entry options are available based on the training or checking event. The only opportunity for reporting entity to provide text would be in the context of check pilot or evaluator comments. Because the selection of event type is primarily comprised of predefined items, every reporting entity who wishes to record, for example, a line check, will be reporting line checks in

the same format and manner with the same associated data fields such as the type of training program, the date of the check, and the results of the check. When these records are displayed to a reviewing entity in an organized report, the reviewing entity can digest the critical facts and details more quickly and easily than when a reviewing entity must review multiple reports in various formats produced by each previous employer.

The FAA revised AC 120–68J to refine the data elements that the FAA expects to see reported in the PRD in order to comply with the regulatory requirement set forth in § 111.225. Each training record will include information concerning the type of training program and curriculum the operator uses. The PRD will aid in identifying the training elements most crucial to identifying patterns in pilot performance, but the FAA notes that the purpose of the PRD is to share information with reviewing entities, not develop training elements.

#### ix. Comments Regarding the Requirement for Different Types of Operators To Enter Training Records in the PRD

Some commenters, including Koch Industries (Koch), which employs more than 30 pilots who hold type ratings under 14 CFR 61.31(a), objected to the requirement to report training and checking records. Koch asserted the FAA already maintains the records or that the records are available from training centers. RAA opposed the proposed requirement to include employer-required training records in the database, saying it will add nothing to comparative data or the standard reached by the individual, as the training may be voluntary and will vary widely from carrier to carrier.

NASA and JPATS noted an FAA pilot certificate is not a requirement to operate government aircraft at the discretion of the Federal agency, and that their qualification, requalification, currency, and check flight requirements do not align with part 61 currency requirements. These commenters stated the proposed requirements do not benefit the government and appear only to benefit industry. JPATS also noted it does not have the resources to maintain these records, that the records are not relevant to JPATS operations, and that the requirement would be burdensome.

The Small UAV Coalition said that, because unmanned aircraft systems (UAS) are different from the aircraft used in traditional air carriage, the safety risks that the PRD seeks to mitigate do not necessitate requiring UAS air carriers to produce or review

<sup>52</sup> “Pilot time” is defined in § 61.1 and includes time in which a person serves as a required pilot flightcrew member and time giving and receiving flight training in an aircraft, full flight simulator, flight training device, or aviation training device.

<sup>53</sup> The FAA views qualification requirements broadly as any certificate, rating, training, checking, testing and experience required to be qualified or maintain qualification for a position (e.g. pilot in command) in a particular operation (e.g. part 121).

training and proficiency records. Moreover, the commenter continued, given the significant difference between different types of UAS, the ability to compare training and performance records diminishes the relevance of that review. Accordingly, the Small UAV Coalition recommended that the FAA revise the regulatory text to state the requirement “does not apply to air carriers and other operators operating only autonomous unmanned aircraft systems.” The Coalition also requested the FAA acknowledge in the preamble of this rule that certain requirements for submission of documentation of compliance with employer-required training, checking, testing, etc., do not apply to air carriers or other operators using only autonomous UAS.

An individual commenter asked whether training providers would supply information to the PRD directly. Another individual commenter recommended that the FAA require part 142 training centers to provide training records to the database directly, thereby alleviating the administrative burden on part 91 operators. Another commenter said flight training providers, who support insurance industry requirements (such as FlightSafety, SimCom, LOFT, etc.) and maintain training records under § 61.58 for purposes of part 142 training centers, should report any below-standard performance on initial or subsequent type rating checks directly to the FAA.

#### x. FAA Response

To the extent that the commenters stated it is not appropriate to include training or proficiency records of pilots engaged in small UAS operations, the FAA does not agree. Small UAS operators subject to 14 CFR part 135 are already subject to recordkeeping requirements. The data elements provided in the AC will be broadly applicable to, and are appropriate for, both manned and unmanned operations. Consistent with all part 135 operations, pilots serving in part 135 unmanned aircraft operations are trained under an FAA-approved training program and are subject to proficiency checks and line checks. Although the operations might, in some ways, be different from manned aircraft, the pilots are trained and evaluated on areas universal to pilot performance, such as aeronautical decision-making, compliance with FAA regulations (including those related to airspace), and crew resource management. A pilot’s performance during training and checking events can provide relevant information to operators looking to employ a pilot; therefore, no basis exists for excluding

these pilot records from the reporting requirements. Moreover, the PRD Act does not expressly exclude such operations.

With respect to comments concerned about the inclusion of training records for certain part 91 operators, the FAA stated in the NPRM:

The FAA recognizes that commercial air tour operators, corporate flight departments, and entities conducting public aircraft operations are not required to maintain an approved pilot training program or maintain records concerning employer-mandated pilot training and qualification events. However, all pilots must record certain events in their pilot logbooks to maintain their currency with an FAA pilot certificate pursuant to § 61.57. While these events are required to be recorded by pilots in their logbooks, the FAA expects that operators employing pilots maintain similar pilot training and currency records demonstrating compliance with part 61 to document that their pilots are trained, qualified and current for operational safety and regulatory compliance purposes.

The FAA reiterates in this final rule that the NPRM did not propose to impose a new system of recordkeeping for training records not already kept by commercial air tour operators, corporate flight departments, and entities conducting public aircraft operations. As stated above, the FAA relied on information indicating that employers falling within this grouping (PAC operators) may keep training records of their own accord. If an operator keeps those records, the FAA proposed to require those records be reported to the PRD. While the record may not provide the same level of assurance that may accompany a required training record from an approved training program, these records play an important role in helping the reviewing entity make a comprehensive assessment of a pilot’s proficiency.

Upon review of the comments indicating that employers do not generally keep records generated exclusively under part 61, and in consideration of the new method of compliance for PAC operators to report training records upon request, the FAA does not envision that this requirement would be overly burdensome for PAC operators. Accordingly, § 111.225 requires that when a PAC operator maintains training records, the operator must enter those records into the PRD upon receipt of a request in accordance with § 111.215(b). The reporting entity should include any training records available to the extent those records are compliant with the requirements in § 111.225. As discussed in the NPRM, the FAA believes there is value in reporting of employer-specific training records, to the extent they exist, as

many operators complete training outside an approved training program. The FAA does not intend the PRD to create additional record keeping requirements. Instead, this rule makes some records that a reporting entity already maintains available in a central database for hiring employers. AC 120–68J describes in detail the possible record elements for entry in the PRD.

The PRD Act does not apply to part 142 training centers or any other entity that has not employed the pilot, as discussed further in Section V.A.1.

#### xi. Other Comments Regarding Training Records

Ameristar and ALPA commented on the proposed reporting elements for training records. Ameristar recommended that the FAA rewrite the paragraph to read: “Result of an event as satisfactory or unsatisfactory,” and delete the rest of the paragraph, and amend proposed § 111.220(c)(7) to require comments explaining a result that is unsatisfactory. ALPA said it agrees with the proposed requirement in § 111.220(c)(6) for every “Result of the event” to be reported as either “satisfactory” or “unsatisfactory” because the approach promotes uniform and objective reports. ALPA said it opposes the proposed requirement to include a brief comment explaining the basis for any “unsatisfactory” event. ALPA asserted this proposed requirement contradicts the language and intent of the PRD Act and is unwise as a matter of policy.

Atlas Air also commented on the importance of ensuring awareness of a pilot who initiated but did not finish a training program. The commenter noted the proposed rule requires reporting of training segments that end “Satisfactorily, Unsatisfactorily, Complete, Incomplete, Pass, or Fail,” but it does not give direction as to the description of what an “Incomplete” is and how it should be described in the free text areas of the PRD. The commenter stated the air carrier must provide the specific reason the training was not completed as related to pilot proficiency. Atlas Air stated the FAA needs to provide guidelines about the specific information to be reported in the free text areas to resolve inadequacies with the current PRIA system. CAA and RAA similarly recommended the FAA require carriers to report the reason a pilot did not complete a training course. CAE also questioned whether a pilot who, in training, shows consistent difficulty with a task or area of operation over more than one training event yet ultimately passes each event

successfully will be trackable in this system.

Noting that the pilot involved in the Continental Flight 3407 accident had training issues that included three instances of additional training while a first officer, Atlas Air and another commenter said it is unclear whether records of these types of additional training will be available in the PRD. The commenter stated none of that information would have been published in the PRD under the current proposal.

Ameristar asked the FAA to clarify “subpart of the title” in proposed § 111.220(c)(4). Ameristar also said proposed § 11.220(c)(4) and (5) appear to focus only on training but do not seem to include proficiency checks, line checks, or other checks. The commenter suggested references to regulatory sections only, and not to a company’s training program, which would be meaningless to a reviewing entity. Ameristar noted that training under part 121, Appendix E, may have well over 100 elements for which a satisfactory, unsatisfactory, or incomplete grade could be given to each element. The commenter asked whether the FAA intends records of all such events would be included, even if the pilot satisfactorily completes the type rating or proficiency checks. If so, the commenter asserted, this would be extremely burdensome for a reporting entity and would not serve any purpose or enhance safety. Ameristar said it believes that indoctrination ground training is not relevant as it is not aircraft specific.

Two individual commenters recommended the FAA remove the reporting requirement for pilot currency records. Commenting on the proposed requirements to report other training and qualification events (as well as drug testing results), a commenter also suggested that the final rule include language to protect operators from potential liability from a pilot taking legal action against an operator for reporting these factual items.

Cummins, Inc. suggested that the length of time a pilot needs to complete training should not result in adverse implications or negative connotations, including impact on future career options. Cummins stated the employer could discriminate inadvertently based on a disability, as a reasonable accommodation applied in some circumstances is allowing additional time to complete a test. Another commenter was concerned about the prospect of a pilot failing the check due to a temporary physical, emotional, or mental situation impacting the pilot’s ability to perform satisfactorily in a high

stress situation, and stated there should be some adjustments available to account for such circumstances.

An individual commenter said records maintained and reported for this section need to be limited to those events and training that occur while employed with the certificate holder or operator. This commenter also said the prohibition against reporting flight and duty time “is negative to safety and allows for continued fraudulent activity in the aviation industry.” The commenter asserted that providing certificate holders and operators with the ability to check stated experience against a trusted database and the pilot’s own logbook would increase safety and eliminate the possibility that flight time does not appear to match skill level.

A4A and RAA asked the FAA to clarify a record element, “Line Operating Flight Time,” because it appears that the FAA meant to use the Line-Oriented Flight Training (LOFT), as defined in AC 120–35D, instead of Line Operating Flight Time.

#### xii. FAA Response

The FAA removed the reference to “currency” in § 111.225(a)(2) as adopted. The FAA reevaluated the language of the proposed regulation and confirms that it does not intend to collect currency records in this part. This revision is further supported by the exclusion of recent flight experience<sup>54</sup> in § 111.225(b)(3). The FAA notes, however, that operating experience under the supervision of a check pilot or evaluator will be included in the PRD. These events are an assessment of pilot proficiency at a critical stage in a pilot’s service for an operator.

Specific flight information normally found in a pilot’s logbook such as departure point, destination, and flight time details will not be reported to the PRD, as the PRD is not intended to be a duplicate flight logbook. The FAA also determined it will not require reporting of items associated with §§ 61.56 (flight review) and 61.57 (recent flight experience). The FAA understands that pilots will often share the existence of these records with employers and that some employers may actually keep additional copies of the records. However, the pilot is under no obligation to share these records with employers for their recordkeeping. Commercial air tour operators, corporate flight departments, and entities conducting public aircraft operations

<sup>54</sup> The FAA notes that the term “currency” refers to meeting the appropriate airman and medical recency requirements specific to the operation or activity. See 14 CFR 61.2(b). It includes recent flight experience.

may indeed have these records, which are maintained by the pilot, but there will be many instances where operators will not have these records as the burden of compliance is on the pilot.

For training, proficiency, and qualification records for all reporting entities, this rule includes the items required to be reported in accordance with § 111.225(c)(7) to indicate the inclusion of specific detail about unsatisfactory events, which includes incomplete events. Such inclusion will ensure the amount of information provided to a reviewing entity is at least as much as is provided under PRIA. Where the result would be complete or incomplete, events that are complete would be considered “satisfactory” and events that are incomplete would be considered “unsatisfactory.” The form for reporting these records will distinguish between incomplete events and other unsatisfactory events. For such records, a reporting entity would provide further detail about the specific maneuvers or events that were unsatisfactory or incomplete. AQP validation events conducted by evaluators are an assessment of pilot proficiency, and the comments of the evaluator will be valuable to a reviewing entity. Such comments, including an indication of which events or maneuvers were unsatisfactory or incomplete, should also be included.

Ameristar asked if the FAA intended for the PRD record to include each maneuver or task included on a typical proficiency record. The forms used for proficiency checks include several items which could be accomplished during the checking event and normally, a check pilot or evaluator indicates whether an item is applicable, satisfactory, or unsatisfactory. The FAA agrees that requiring every specific item, satisfactory or unsatisfactory, to be reported in the PRD record would be overly burdensome. However, in the case of an unsatisfactory checking event, a reviewing entity needs to be able to determine exactly what task or maneuver was unsatisfactory. To that end, as discussed in the previous paragraph, the FAA will require reporting entities to indicate which tasks or maneuvers were unsatisfactory or incomplete while not requiring satisfactory items be listed in such detail.

The free text areas of the PRD will exist exclusively for comments related to a checking event and for an indication of events that are unsatisfactory or incomplete, as discussed previously. The FAA considers incomplete events to be unsatisfactory, as described above. The



form of the record itself will distinguish between incomplete events from other unsatisfactory events, based on the event type. The record entry for those events will also include specific detail indicating whether specific items were unsatisfactory or incomplete, as explained previously.

In response to the comments regarding second in command (first officer) training, as required by § 121.415(j), approved training programs must provide training for pilots who have been identified as having performance deficiencies during training and checking and/or multiple failures during checking. For AQP programs, § 121.913(b)(4) specifies that a special tracking curriculum is required when an air carrier has assigned a pilot to an augmented schedule of training, checking, or both. Reporting entities must include records of remedial training or special tracking when those records apply. These records, in addition to the other training, qualification, and proficiency records specified in AC 120–68J, will assist the reviewing entity in making an assessment of the pilot’s history.

Regarding comments about the clarity in the regulatory text when the FAA refers to training, checking, and proficiency records in proposed § 111.220(c)(4) and (5), approved training programs are generally comprised of various curricula. Most curricula then include various training (e.g. § 121.427 recurrent training) and checking events (e.g. § 121.441 proficiency checks). The FAA considered what curricula and related events apply to the various training programs and which of those would provide meaningful information to a reviewing entity, the objective being to find the appropriate balance between providing sufficient detail in the PRD against the burden that may be placed on reporting entities. Part of this review by the FAA considered that while most records for a particular curriculum or training event are most often satisfactory, that record becomes much more telling to the reviewing entity when it is unsatisfactory. The FAA has included some records because, although a rare occurrence, noting unsatisfactory or incomplete performance by a pilot is an important part of the assessment and must be made available to a reviewing entity in the interest of safety. As described in AC120–68J, the FAA believes only particular record elements provided in the PRD will be applicable to a pilot. For example, reporting entities will enter various curriculum completions or withdrawals such as basic

indoctrination or upgrade curriculum. Various checking events such as line checks and maneuvers validations when completed as part of a continuing qualification curriculum will also be reported. Another example as reflected in AC120–68J is that in most cases, the FAA has removed the reporting element of “Upgrade ground training and upgrade flight training.” Instead, only a single record of the Upgrade training curriculum is entered. AC120–68J also includes certain specific training records such as extended envelope training.

The FAA agrees that a variety of circumstances could affect a pilot’s ability to perform satisfactorily in a high stress situation but does not agree that the PRD should account for such a situation. Operating an aircraft often causes high stress situations for a pilot, regardless of a temporary situation affecting a pilot’s ability to perform, and a pilot completing or satisfactorily passing a check regardless of external circumstances is a helpful indicator for a hiring employer. The FAA intends the PRD to prompt conversations; in this regard, a pilot is free to offer an explanation to an employer regarding a check failure or a delay to complete training and encourages pilots and potential employers to engage in a robust dialogue during the hiring process.

As discussed extensively in the NPRM, all records entered by reporting entities, including training, qualification, and proficiency records, must only be the records they have generated or are otherwise maintaining for their own operational needs. For example, a reporting entity would not report a record it received in response to a PRIA request. AC 120–68J states that records received in response to a PRIA request or records obtained from the PRD should be maintained as separate records and should not be stored with the other pilot records. This is to prevent those records obtained under PRIA or via the PRD from being entered again into the database or otherwise released to another operator in response to a PRIA request.

PAC operators that elect to keep records from training centers or when provided by pilots would report those records to the PRD even though they did not directly create those records as the records are serving that operator’s direct operational needs.

The FAA clarifies that, when it mistakenly used the term Line Operating Flight Time in the NPRM, it was referring to Line Oriented Flight Training (LOFT). The FAA has since determined reporting individual LOFT

events to the PRD is not appropriate and that the PRD will instead accept information regarding training curricula, but not the individual training sessions they include.

Lastly, the PRD does not collect flight and duty records as this information is not particularly useful to a reviewing entity. These records would also impose a significant burden for reporting entities. A commenter opined that review of such records could help validate a pilot’s logbook records if the PRD recorded flight and duty records. The commenter suggested a reviewing entity could compare the flights shown in the logbook against the flights shown in the PRD. This would only be true if the PRD contained every flight record, including records for flights performed unrelated to a reporting entity. It is not feasible to ensure every flight record could be entered in these cases. If the PRD included some of the flight and duty records but not others, the PRD would be inadequate for validating against a pilot’s flight records. Additionally, the PRD does not perform any data validation to compare records entered against the various applicable regulations. For example, the PRD does not check that a pilot has performed a line check when required or that a pilot has successfully completed all required training. The PRD simply accepts the record and redisplay it to a reviewing entity. It is the responsibility of the reviewing entity to use the information found in the PRD to help assess a pilot when making a hiring decision and of the reporting entity to report accurate information.

This section also includes reporting deadlines. In the NPRM, the FAA proposed including reporting timelines in a different section (proposed § 111.250). The FAA has reorganized part 111 to move the expected timelines for reporting into each record section. The remainder of § 111.225 is adopted as proposed.

#### 7. Final Disciplinary Action Records—Section 111.230

As required by the PRD Act, the FAA proposed to include records of final disciplinary actions in the PRD. The FAA proposed including written warnings, suspensions, and terminations. The proposal excluded any disciplinary actions subsequently overturned as a result of a settlement agreement, the official decision or order of any panel or individual with authority to review employment disputes or by any court of law, or other mutual agreement between the employer and the pilot. The FAA also



proposed certain data elements to be included in the record.

i. Comments Received

The NTSB, A4A, NBAA, CAPA, ALPA, Ameristar, and individuals addressed the proposed requirement to report final disciplinary action records to the database. CAPA and four individual commenters opposed the proposed requirement to report final disciplinary action records to the PRD. The remaining commenters sought clarification from the FAA on the types of final disciplinary actions for which records must be reported or addressed other aspects of the proposed requirement.

ii. General Comments on Inclusion of Disciplinary Action Records

CAPA and several individual commenters objected to the reporting in PRD of any records related to disciplinary actions. These commenters argued that such information is too subjective and that including it in the PRD could open the door for false reports of disciplinary actions by vindictive or biased employers and could unfairly affect future employment opportunities.

iii. Comments Addressing the Types of Disciplinary Actions Reportable to the PRD

The NTSB, ALPA, NBAA, and A4A commented on the types of disciplinary actions that would be reportable to the PRD. Noting that it has identified deficiencies in pilots' adherence to standard operating procedures as contributing causal factors in aviation accidents, the NTSB expressed support for the FAA's proposal to expand upon what is required in PRIA to include in the PRD, "[r]ecords of an activity or event specifically related to an individual's completion of the core duties and responsibilities of a pilot to maintain safe aircraft operations, as assigned by the employer and established by the FAA." ALPA expressed support for the FAA's proposal to limit disciplinary actions that may be entered into the PRD to only those "pertaining to pilot performance," excluding any disciplinary records arising out of actions or events unrelated to the pilot's completion of core duties and responsibilities to ensure the safe operation of the aircraft. NBAA asserted, however, that "pilot performance" is quite broad and that the FAA should clarify in the regulatory text that reportable disciplinary action is limited to "pilot performance related to the execution of aeronautical duties," as stated in Draft AC 120-68J at

paragraph A.1.1. NBAA contended this clarification should be contained in the regulation itself to mitigate any malfeasance by a noncompliant or malicious operator.

A4A said that the definition of "final disciplinary action record" is unclear because it combines two distinct types of employment action—corrective and disciplinary—and is silent as to a third component that is often a required element of a disciplinary action, which is loss of pay or benefits. The commenter said the final rule should clarify that loss of pay or benefits is not necessary for an employment action to constitute a "final disciplinary action." A4A asserted that the proposed rule is unclear because it conflates corrective actions with disciplinary actions by stating in proposed § 111.225(d)(1) that employers must report "the type of disciplinary action taken by the employer," and then stating in proposed § 111.225(d)(3) that employers must submit "a brief summary of the event resulting in corrective action." A4A noted that some employers define "corrective action" as a non-disciplinary action taken by employers to remedy a perceived performance short-fall or minor misconduct, treating it as a training event, not a disciplinary event. The commenter said that it is unclear whether the FAA meant for the two types of actions to be identical or distinct.

A4A also noted that the proposed rule requires only that final disciplinary actions be reported, creating a potential years-long gap between when misconduct or performance failure occurs and when it is reported in the PRD, due to internal company grievance procedures. A4A said the final rule must address this gap and allow for the transparent transfer of relevant pilot records information to enable hiring carriers to make informed decisions.

ALPA strongly objected to the FAA's proposal to require carriers to add written descriptions about disciplinary actions.

ALPA and A4A commented on the proposal to prohibit entry of any record of disciplinary action that was subsequently overturned. ALPA expressed general support for the proposal, but for disciplinary actions overturned after entry into the database, the commenter urged the FAA to require carriers to submit requests for correction to the PRD within 5 days of such overturned action, instead of the 10 days proposed. A4A also noted that the proposal does not define what "overturned" means and said the final rule should clarify whether all, or some, settlement agreements constitute an

"overturning." A4A noted that the preamble points to language in House Report 105-372 (Oct. 31, 1997), clarifying that "subsequently overturned" includes discipline that has been rescinded as a result of a "legitimate settlement agreement," and that a "legitimate settlement agreement" could include instances in which the parties agree the action that was the subject of discipline did not occur or was not the pilot's fault; however, it should not include instances where the air carrier agrees to wipe the pilot's record clean in order to pass the pilot onto another unsuspecting carrier. A4A argued that these examples in the preamble represent two unlikely scenarios occurring at the margins and do not address the majority of settlement agreements, which are entered into to avoid protracted litigation without admission of fault by the pilot or concession by the employer. A4A expressed concern over a perceived contradiction in the proposed rule, which clearly bars entry of disciplinary records when overturned by a settlement, without regard for the basis of that settlement. A4A suggested the FAA clarify whether all settlement agreements overturning a disciplinary action bar reporting of that action or whether § 111.225(b)(1) is limited to only those settlement agreements that recognize the pilot was not at fault.

Ameristar referred to Table 3 in the preamble to the NPRM, which contains the data elements required to be entered into a pilot's historical record, and questioned why aircraft type is relevant to a disciplinary action.

NBAA expressed concern about proposed § 111.260 and the definition of "Final Disciplinary Action," which would require "other operators," presumably including certain part 91 operators, to have a documented process for resolving disputes related to disciplinary action records included to the PRD. NBAA asserted that for a two- or three-pilot, two-aircraft operation, this could be impractical or ineffective, as few individuals are typically involved in human resources in a small or even mid-sized flight operation and some such operators may not even have or retain these types of records. NBAA argued that this is a reason why most part 91 operators should not be subject to the PRD.

iv. FAA Response

The FAA reiterates that the PRD Act requires reporting of disciplinary action records. In response to comments regarding whether loss of pay or benefits is necessary for an action to constitute a disciplinary action, the FAA defines

disciplinary action for purposes of part 111 without mentioning loss of pay or benefits because neither is necessary for an event to constitute a disciplinary action. The FAA does not adopt any employer-specific definitions of these events. The FAA notes that insofar as an operator might internally consider certain correctional records as non-disciplinary, this final rule intends to extend the same expectations regarding record reporting to the PRD as was required under PRIA. Operators should continue a similar posture to reporting disciplinary records to the PRD as was the case under PRIA. It is incumbent on the employer to include events falling within the general description this rule provides, regardless of an employer's internal definition. The FAA emphasizes, however, that the disciplinary action, as defined in this rule, must be relevant to pilot performance.

The FAA has reviewed comments suggesting the FAA require operators submit a correction within 5 days instead of 10 days for actions overturned after they are submitted to the database. The timeframe the FAA proposed in the NPRM is appropriate as it permits slightly more than one working week in the event the responsible person or other users are unavailable for five working days. This rule adopts the requirement, as proposed.

Section 111.230(b)(1) and the PRD Act prohibit inclusion in the PRD of disciplinary action records where the disciplinary action is subsequently overturned. The threshold question in determining whether a settlement agreement would cause a record to be removed or not reported is whether the settlement agreement invalidates the disciplinary action that prompted the creation of the record. When considering what agreements should cause a record to be removed or not reported, the interest of aviation safety supports narrowing that class to those agreements arising from situations in which parties agreed the action did not occur or was not the pilot's fault. As referenced by A4A, the "legitimate settlement agreement" language quoted in the NPRM further supports such a limitation.<sup>55</sup>

Accordingly, the FAA updates the regulatory text for this section and for § 111.235 regarding separation from employment actions to reflect that the FAA only considers such actions to be overturned for purposes of removing or not reporting the record where there is a finding in either the agreement or in

the decision of the person or panel with authority to adjudicate employment disputes or a court of law that the underlying event did not occur or the pilot was not at fault. An affirmative finding is required; an agreement or adjudication does not suffice to overturn an action where it merely leaves unresolved whether the event occurred or whether the pilot was at fault. If an agreement does not overturn the disciplinary action or separation from employment action in accordance with the terms set forth by the FAA in this part, then the record of the disciplinary action must be in the PRD. The FAA fully expects employers to act in a manner consistent with the PRD Act by not engaging in conduct that would wipe the pilot's record clean in order to pass him or her onto another unsuspecting carrier, as that effectively would undermine the purpose of the PRD.

The FAA also updates this section and § 111.235 to change "settlement agreement" to "documented agreement" and remove "other mutual agreement." The FAA reconsidered inclusion of this provision and determined that the only acceptable agreement between a pilot and an employer for purposes of determining that a disciplinary action record or a separation from employment action is overturned would be a documented agreement. Whether the agreement could be deemed a "settlement" agreement or some form of "other mutual" agreement is not germane; rather, the crux is that an informal, undocumented agreement between a pilot and an employer would not be sufficiently robust and verifiable to support removing or not reporting a record from the PRD.

The FAA will not require reporting of an aircraft type when entering final disciplinary actions. The FAA agrees with commenters that this data element is not relevant as part of the PRD record. Cases might exist in which a reviewing entity considers aircraft type; however, as stated previously, the PRD is not meant to be the final source of data when assessing a pilot during the hiring process. The PRD will be a baseline or starting point for discussion between the pilot, reviewing entities, and previous employers.

It is incumbent on the operator or entity employing the pilot to determine when an action is final. Once no further action is pending, this rule requires a record of the action. In determining that the action is final, the operator or entity should conclude that the action is not subject to any pending dispute, including any form of grievance procedure or litigation. The PRD Act

only permits entry of disciplinary action records that were not subsequently overturned. As a result, internal resolution processes that precede the record being final must be complete prior to entry of that disciplinary action in the PRD. The FAA acknowledges that, as the A4A noted, the PRD Act's prohibition on recording actions prior to the final record could create a "years-long" gap between when misconduct occurs and when it is reported in PRD. The FAA concurs with A4A's example that if a disciplinary action were "effective" that it could also be final, depending on the operator's determination that the action is not subject to pending dispute. The FAA does not have oversight over each operator or entity's disciplinary system, and defers judgement to an operator to decide when the action is a "final" record. Once an action is final, the record must be entered within 30 days.

Many commenters asked for clarification concerning the meaning of "any final disciplinary action record pertaining to pilot performance" and core duties and responsibilities of a pilot as they relate to sexual harassment, discrimination, or other misconduct. Section V.A.3, Definitions, includes a description of the FAA's considerations about which records pertain to pilot performance.

The FAA adopts § 111.230 with some changes to the regulatory text, primarily to incorporate text regarding reporting timelines and to add the possibility for certain operators to report records in accordance with the process set forth in § 111.215. In the NPRM, the FAA proposed including reporting timelines in a different section (proposed § 111.250) but after further evaluation, decided to instead include the expected timelines for reporting in each record section. The new text also reflects the new method for reporting for certain types of disciplinary action records, explained previously in Section V.C.4

This rule will not require a reporting entity to include a brief summary of an event resulting in the corrective action. The FAA explained in the NPRM that the PRD would include a text field limited to 256 characters. The FAA reviewed comments on this topic and concluded that 256 characters is not a significant amount of text in which to explain such an event and that establishing a version on which the employer and pilot agree may not be possible. Instead, consistent with the FAA's view of the PRD as a source of basic information but not the dispositive authority about a pilot's history, the database will include several options for categorization and a place to enter the

<sup>55</sup> 85 FR 17684.

date. Additionally, this final rule requires reporting entities to retain documents relevant to a final disciplinary action reported in accordance with § 111.230(a) for five years after reporting that event, if those documents are available. Reporting entities will also be required to provide those relevant documents to a reviewing entity upon request. Under this provision, “relevant” means that the documents form the basis for the record reported to the PRD. The FAA envisions the relevant documents that reporting entities will retain and share would be any information that would have been used to develop the summary record proposed by the NPRM, such as a written record of a suspension detailing the circumstances of the event that led to the action. Additionally, the FAA would consider these relevant documents to be available if the documents exist. The FAA does not expect that there would be a difference between the types of supplemental relevant documents retained under this provision and the types of documents currently shared between employers under PRIA about final disciplinary actions and separation from employment actions.

The FAA notes that this final rule also adopts an identical approach for any documents relevant to a separation from employment action. The FAA’s objective in adopting this provision is to ensure that if more detailed information about complex employment actions exists, reviewing entities have access to that information if desired when making a determination about whether to hire a pilot. The FAA has determined this requirement is commensurate with the frequency with which potential employers are likely to seek more information about final disciplinary action events. The FAA anticipates that most reviewing entities will make a determination about a pilot based on the information about the event that appears in the PRD, but encourages reviewing entities to request further information if it would be helpful in the hiring process.

A reporting entity must also provide a copy of such information to the subject pilot upon request, as would be required for any record reported to the PRD, and a pilot can submit a dispute resolution request for this information to a reporting entity through the PRD if that pilot disagrees with the content of the additional records. The reporting entity must provide these supplementary records within 14 days of receiving the request, consistent with the FAA’s timeframe for other record reporting provisions.

As adopted, the final rule requires an indication of whether the disciplinary action was a written warning, a suspension, or a termination; whether the disciplinary action resulted in a temporary or permanent removal from aircraft operations; and the date the disciplinary action occurred. For PAC operators, only disciplinary actions that resulted in a temporary or permanent removal from flight operations must be reported upon the action becoming final. Any other disciplinary action may be reported upon request from a reviewing entity, in accordance with the process set forth in § 111.215(b).

The remainder of § 111.230 is adopted as proposed, with renumbering from the NPRM as reflected throughout this section.

#### 8. Final Separation From Employment Records—Section 111.235

In the NPRM, the FAA proposed including separation from employment records in the PRD, in accordance with the statutory requirement to include such records. The FAA proposed requiring an employer to keep records under separate regulations, as well as other separation from employment records kept by the employer, specifically those related to pilot performance. The FAA also proposed prohibiting inclusion of separation from employment records where the action was subsequently overturned.

##### i. Comment Received

RAA, A4A CAPA, Ameristar, PlaneSense, Inc., and many individuals commented on the proposed requirement for operators to enter into the PRD certain information pertaining to a pilot’s final separation of employment. Ameristar asserted that “[r]ecords pertaining to pilot performance” is vague, is redundant of proposed § 111.230(a)(1), and appears to include non-pilot related information that is outside the scope of § 111.230(a)(1).

Commenting on separation from employment that an operator initiates but that is not due to pilot performance, an individual commenter asserted the FAA did not propose to allow the pilot’s end-of-employment disposition to reflect that the termination was unrelated to performance. In such instances, the commenter noted, the operator would indicate that the reason for the pilot’s release from employment was “Termination,” but there would be no further explanation and no opportunity for the pilot to add commentary. This commenter also noted that no path exists for a pilot to provide or deny consent to comments or

records provided by anyone who registers as an authorized user manager, which allows an authorized user to submit comments or records on a pilot, even pilots not under the user’s supervision. Addressing a situation in which a pilot resigns after being asked to engage in an unsafe operation, another individual suggested employers will fabricate a reason for separation to affect the pilot negatively.

Commenting on separation from employment that an operator initiates and that is related to pilot performance, RAA requested clarification regarding whether any termination related to a pilot’s performance would automatically create two entries into the PRD for the same incident—one record of the disciplinary action resulting in termination and another record of the termination, based on the underlying incident. RAA also noted that operators sometimes use both a primary and secondary reason for termination and questioned whether the operator must report both reasons or only the primary reason for termination.

A4A said the final rule should clarify that only those professional disqualifications related to pilot skills are reportable. A4A noted the FAA provided examples of professional disqualifications that would have to be entered into the PRD (at 85 FR 17687), which include a pilot who has been disqualified as a PIC due to a failed proficiency check and referred to SIC training and requalification. A4A stated the NPRM is unclear as to why this is listed as an example of a separation record when the pilot is still employed. A4A characterized this example as a failed training event, not a termination event. A4A suggested that including this example implies a carrier would be required to create a separate record each time a pilot is disqualified for any reason, even if that reason has no bearing on piloting abilities. A4A said that requiring a PRD report upon loss of such qualifications would be excessively burdensome and would not further safety.

A number of commenters, including CAPA and PlaneSense, addressed the proposed requirement for operators to submit “a brief summary of the event resulting in separation from employment.” The PlaneSense commenters objected to this proposed requirement and requested that the FAA either remove it from the final rule or that the final rule provide employers with immunity from legal action brought as a result of the summary. These commenters argued that this requirement is beyond the scope of the PRD Act, could violate pilots’ medical

privacy, and could make carriers vulnerable to lawsuits.

An individual commenter recommended that the FAA amend the language in proposed § 111.230(d)(6) to read: “For separation of employment a brief summary of the separation should be included.” The commenter said this would eliminate the loophole many pilots and air carriers use, in that non-performing pilots might be asked or told to resign instead of being terminated. The commenter argued this industry practice passes poor-performing pilots from carrier to carrier without a means to catch issues of performance found in the training environment. The commenter pointed to the First Officer of the Atlas Air 3591 crash in Trinity Bay, Texas, who “was found to have resigned multiple times for personal reasons.” However, A4A went on to state that “examination of data in the NTSB docket indicates that he wasn’t performing at these carriers as expected, but was allowed to resign without consequences.”

CAPA objected to the proposed 256-character limit for summaries terminations, arguing that such cases should not be subject to arbitrary limits.

NBAA noted “furlough” is not typically used in part 91 or part 135 operations and explained that few business aviation operators furlough their employees. This commenter indicated that furlough status may deter a prospective employer from hiring a candidate who is furloughed from a part 121 air carrier position, as the candidate remains eligible to return to the candidate’s previous position. NBAA recommended that the FAA replace “furlough” with “laid off” or “position eliminated” (temporary or permanent).

#### ii. FAA Response

The FAA agrees, after considering all comments received, that for many cases, a 256 character summary would not be sufficient. Adequate opportunity must exist to explain sufficiently a separation from employment action. Therefore, the FAA is removing the requirement for a summary. Employers will designate by category what type of separation from employment it was, and the date. As discussed in the previous section regarding final disciplinary actions, this final rule requires reporting entities to retain documents relevant to a final separation from employment action record for five years after reporting that event, if such documents are available. Reporting entities will also be required to provide those relevant documents to a reviewing entity upon request. The FAA is adopting this requirement instead of requiring reporting entities to

draft a 256 character summary of the event as proposed in the NPRM, and envisions the relevant documents that reporting entities share would be any information that would have been used to develop the proposed summary of the event. This amendment addresses the comments expressing concerns related to possible legal action as a result of the employer posting a summary.

As mentioned in the NPRM, the FAA understands situations might arise in which a pilot may resign without facing repercussions for poor pilot performance. Reporting entities should accurately construe the separation from employment action in the PRD. Even if a pilot is permitted to resign despite poor performance, a disciplinary action associated with that poor performance in the PRD would likely exist. In that situation, the FAA anticipates the hiring employer would review the resignation and disciplinary action as a consideration worthy of discussion with the pilot, and ask the pilot and former employer for information about the incident.

The FAA also removes the term “furlough” from the regulation, because it would also be considered an “employer-initiated separation unrelated to pilot performance.” Furlough entries should only be reported once the separation from employment has been final for 30 days.

If an event results in multiple outcomes, an identical disciplinary and separation from employment action for a pilot might exist. In such cases, the entity may report the event in the PRD as a termination as a result of a disciplinary action and a separation from employment resulting from pilot performance. All such information is relevant and must be included in the database. The pilot has an ability to request a correction or commence a dispute regarding any record, discussed further in Section V.C.11.

Generally, § 111.235 is adopted as proposed, with corresponding edits to reflect changes made to the previous section, including reference to compliance with § 111.215(b), moving details about timelines for reporting into this section, and adding amended language categorizing the type of separation from employment. The different categorizations available in the PRD, such as a termination as a result of pilot performance, including professional disqualification related to pilot performance, physical (medical) disqualification, employer-initiated separation not related to pilot performance, or any resignation, including retirement, will provide sufficient detail to give a reviewing

entity a picture of any topics worthy of discussion.

As discussed in the previous section in reference to disciplinary action records that were subsequently overturned, the FAA also makes corresponding changes to this section to reflect that a record is only subsequently overturned if there is a finding in a documented agreement, from a person or panel with the authority to review employment disputes, or from a court of law that the underlying event did not occur or was not the pilot’s fault.

The FAA otherwise adopts this section substantively as proposed. As discussed in the previous section, the FAA made corresponding updates to this section to reflect the new process adopted in § 111.215 and to reflect that PAC operators must report termination records related to pilot performance contemporaneously.

#### 9. Verification of Motor Vehicle Driving Record Search and Evaluation—Section 111.240

The FAA proposed that each operator subject to the requirements of § 111.110 must report to the PRD verification that it met the requirements of § 111.110. The verification would be required within 45 days of the PRD Date of Hire. In § 111.240, the FAA also proposed prohibiting the inclusion of any State driving records in the PRD. Section 111.240 is adopted as proposed, with edits to reflect reorganization of the regulatory text. The 45-day timeline for verification was removed from § 111.250 and placed into the text of § 111.240. The FAA notes that this verification should be marked as complete after the NDR report is received and the reviewing employer has requested records from any States that the NDR indicated would have records regarding the individual. Comments on NDR review are discussed in Section V.B.3.

#### 10. Special Rules for Protected Records—Section 111.245

In the NPRM, the FAA proposed to prohibit the inclusion of records protected by 14 CFR part 193 in the PRD. RAA and A4A supported the proposal. This section is adopted as proposed, with clarifying edits. No records reported as a part of an Aviation Safety Action Program or any other approved Voluntary Safety Reporting Program in accordance with part 193 may be reported to the database, as those records are designated as protected by the FAA. Records not designated as protected by the FAA about an event are still subject to reporting in accordance with this part.

## 11. Correction of Reported Information and Dispute Resolution—Section 111.250

In the NPRM, the FAA proposed a process for correcting errors that an operator becomes aware of with respect to information that an operator reported previously to the PRD. The FAA also proposed to require an employer subject to part 111 have a process in effect for handling disputes regarding pilot records that an operator reported to the PRD.

### i. Comments Received

Many comments addressed the proposed process for identifying and reporting errors and requesting corrections to pilot records in the PRD. Several commenters suggested the PRD automatically alert pilots when changes are made to their records, require pilots to digitally sign off on the accuracy of the changes, and provide pilots a free copy of their record annually.

Many commenters, including the Aircraft Owners and Pilots Association (AOPA), expressed concern that the proposed rule did not provide a clearly defined process for who is responsible for identifying and correcting inaccurate information in the PRD. They recommended those who have access to and might include information on a pilot's record, including the FAA and past employers, must be responsible for correcting inaccuracies that are brought to their attention. ALPA commented on proposed § 111.255, which would require an operator to submit a request for correction within 30 days after discovery of its submission of erroneous or inaccurate information to the PRD. ALPA asserted prompt corrective action is necessary, and stated that notices of correction are quick actions. As such, ALPA recommended the FAA require correction of erroneous information within 5 days.

AOPA and NATA noted that no requirement exists for removing inaccurate information, even if the information was demonstrably false. AOPA indicated the proposed rule did not require the FAA to make a notation concerning disputed information, only that the pilot may make the request. AOPA recommended that the FAA evaluate and remove or correct inaccuracies in the PRD if the employer is unwilling or unable to do so, consistent with the Privacy Act.

Several commenters, including AOPA, NATA, ALPA, and GAMA were concerned that the FAA provides no guidance on how a dispute resolution process should be structured and stated it is imperative that the dispute

resolution procedures involve meaningful review with well-established, mutually agreed-upon procedures. They urged the FAA to maintain oversight of the procedures to ensure a fair process. NATA also commented it would be useful when managing disputed records for a comment field to exist for all entries because similar challenges could arise from omitting an entry for a pilot or entirely missing a pilot entry, making it appear the pilot was never employed by the carrier. NATA further commented that the proposed rule did not clearly address how the FAA will manage pilot records of businesses that have closed. NATA asked, if a pilot identified an error by a prior employer that is now closed (and was neither acquired nor subject to bankruptcy proceedings), to whom the pilot should direct the request for correction and what outcomes are possible.

A4A commented on the process for resolving disputes over information documented in the PRD, asking the FAA to clarify the meaning of “dispute,” “documented process for resolving disputes,” and “investigation.” A4A recommended the FAA limit “disputes” to errors and inaccuracies in the PRD and foreclose any substantive challenge to the information contained within the record. A4A also recommended that the FAA provide a form on the PRD site (which the FAA would manage), in which pilots would enter their disputed claim. A4A recommended the final rule clarify that the dispute notation will remain in the PRD only during the pendency of the dispute. A4A also recommended that the final rule clarify that a negotiated grievance procedure under a collective bargaining agreement or, where applicable, other administrative grievance procedure meets the requirements of proposed § 111.260(a). Further, A4A asked the FAA to clarify that the collective bargaining agreement resolution process would satisfy carrier information correction requirements under the PRD. A4A said the final rule should not permit multiple disputes of the same information. Finally, A4A asked the FAA to clarify that when a carrier corrects an error in the PRD, only the new or corrected record will remain in the PRD.

With respect to historical records, NATA indicated it is possible there are no current air carrier employees with first-hand knowledge of prior pilots and the events recorded for them, and asked what carrier actions the FAA would consider reasonable. NATA argued complications associated with historical records support the need for the ability

to upload copies of physical documents to the PRD, the creation of larger summary text fields, and for adding those summary text fields to any record. NATA requested that the FAA provide additional information on how a carrier should proceed if there are gaps in their historical records.

Several commenters raised concerns about the potential for misuse of the information in the PRD. AOPA and an individual commenter noted the potential exists for employers to use the PRD in a coercive manner against current and former employees. CAPA commented that during periods of rapid growth, a carrier wishing to avoid pilot turnover could prevent its pilots from being considered for employment by other airlines by including training comments intended to discourage their selection. Several individuals noted the potential for an employer to purposefully or accidentally input incorrect or biased information about a pilot.

ALPA said the FAA should confirm that it has a legal responsibility to ensure data entered into and maintained in the PRD complies with the law. Where a pilot complains that data has been entered in violation of section 203 of the PRD Act, or has not been removed as required, ALPA stated the FAA should provide a procedure to remedy such actions. ALPA recommended the FAA provide pilots with a right of appeal through NTSB appeal procedures, according to 14 CFR part 821, to resolve any such unresolved claims.

A4A recommended that the FAA clarify explicitly in the final rule that air carriers and proxies have the option to access the PRD to review and correct information the air carrier reported to the PRD.

### ii. FAA Response

In the NPRM, § 111.250, Duty to Report Records Promptly, provided timelines for required records to be submitted to the FAA in a timely fashion. Section 111.250 listed required records and included specific days within which the records must be reported to the FAA. The FAA removes this regulatory section in its entirety and places each of those timeframes within the respective regulatory sections that discussed the underlying record requirement. As a result, the regulatory sections are renumbered, and proposed § 111.245, Requests for correction of reported information, is renumbered and re-titled § 111.250, Correction of reported information and dispute resolution. This section now also contains the provisions regarding the

dispute resolution process. The FAA considered all comments received on the error correction and dispute resolution process and made revisions to clarify certain aspects of the process.

The FAA received many comments on the NPRM requesting the FAA include more detailed, prescriptive requirements concerning dispute resolution, and for the FAA to confirm it has a legal responsibility to confirm data entered into the PRD complies with the law. However, as noted in the NPRM and in this final rule, the FAA is not required to verify the accuracy of data that reporting entities submit to the PRD. Operators are obligated by regulation and statute to enter accurate information and are in the best possible position to ensure that information is accurate. The PRD Act does not require the FAA to provide prescriptive requirements concerning disputes over information or to oversee a dispute resolution process. The FAA discusses the agency's privacy obligations in the Privacy Impact Assessment for PRD, which will be posted on the docket for this final rule. Nonetheless, the FAA has included requirements in this rule that ensure pilots are afforded remedies if they believe reporting entities have reported erroneous data. These requirements will limit misinformation or misuse of the PRD. Reporting entities must provide final disposition of record disputes to pilots who believe information provided by the entity is inaccurate and to identify disputed records within the PRD system. These processes fulfill the statutory requirement that individuals may make written requests to the Administrator, who will provide individuals a reasonable opportunity to submit written comments to correct any inaccuracies contained in the record.

Finally, although the FAA does not determine the accuracy of records provided by reporting entities, pilots may submit requests for amendment under the Privacy Act to the FAA if they believe records created and maintained by the FAA in its databases, as described in 49 U.S.C. 44703(i)(2), are inaccurate.

As mentioned previously, a pilot always has the option of requesting correction to a record with which the pilot disagrees. A reporting entity is obligated to correct any information that the employer confirms is inaccurate. If a pilot can demonstrate to the reporting entity that the information it entered in the database is inaccurate, the reporting entity must correct the information. Any abuse of the PRD by a reporting entity through the misreporting of information about a pilot would be both a regulatory

and statutory violation and of great concern to the FAA. Fraud or intentional falsification of records reported to the PRD is prohibited under § 111.35. Pilots can report fraud or suspected intentional falsification of records to the FAA for investigation.

With respect to comments regarding the potential for employers to use the PRD in a coercive manner, the FAA acknowledges that this is an inherent concern for any exchange of records about a person, and arguably exists under PRIA. The provision of appropriate statutory and regulatory opportunity for pilots to note disputes mitigates the potential for misuse.

The FAA clarified in Section IV.C.7 and 8 that summaries of the separation and disciplinary action records are not being required to be submitted under this final rule. The FAA recommends that reviewing entities to communicate with the pilot and the reporting entity about the exact nature of the disciplinary or separation action record, appropriately categorized.

In response to ALPA's comment regarding 14 CFR part 821, that part is codified in NTSB regulations and only applies to certificate actions, rather than resolution of disputes concerning pilot records. The FAA cannot amend another agency's regulations.

A pilot dispute of an error or inaccuracy could be substantive or non-substantive in nature. Pilots may flag the error or inaccuracy in the PRD directly, but the request for correction goes through the PRD directly to the reporting entity and would be resolved by that entity. No FAA approval is necessary to correct the record. The dispute notation will remain in the PRD only during the pendency of the dispute. The pilot may remove the dispute indicator if the pilot is satisfied that the record has been corrected. If a reporting entity corrects an error in the PRD, only the new or corrected record will remain visible in the PRD.

A negotiated grievance procedure under a collective bargaining agreement or, where applicable, other administrative grievance procedure would meet the requirements of § 111.255. The FAA does not set requirements for the details of employers' dispute resolution processes.

Information correction requirements under the PRD are complete once a record has either been corrected or the dispute process is complete. Because the FAA does not have a basis to determine the accuracy of industry records, if a reporting entity goes out of business and there is no trustee in bankruptcy to handle dispute resolution obligations, the record would remain in

dispute in the PRD indefinitely. The FAA expects a pilot would explain the nature of the disagreement to a hiring employer.

The FAA adopts the proposed provisions with edits to consolidate the regulation. The FAA also revised the reporting timeframe for record correction to occur within 10 days, unless the reporting entity engages the pilot in its dispute resolution process.

If an operator disagrees with the request for correction of erroneous information, it must engage the pilot requesting the correction in its direct dispute process. The operator must initiate investigation within 30 days, and, within a reasonable amount of time in consideration of the proceedings to establish the accuracy of the record, provide final disposition to the PRD. As mentioned previously, these capabilities will all be built into the functionality of the PRD.

## 12. Duty To Report Historical Records to the PRD—Section 111.255

Proposed § 111.420 incorporated the statutory requirement for air carriers and operators subject to PRIA to enter historical records into the PRD. For air carriers, the PRD Act requires that records dating from August 1, 2005, be entered into the PRD. For other persons, the Act requires records dating from August 1, 2010 must be entered into the PRD. The FAA adopts this provision in the final rule in subpart C.

### i. Comments Received

A4A recommended adopting a final rule that does not include a historical documents requirement. A4A stated that the obligation to provide "records that the air carrier or other person is maintaining on such date of enactment" under 49 U.S.C. 44703(i)(4) must be read in the context of the continued obligations to comply with PRIA until the PRD final rule is in effect. A4A stated the FAA accepted this implicitly when it discussed Alternative 4 in the Regulatory Flexibility Determination section of the NPRM and did not argue that this alternative is contrary to law.<sup>56</sup>

A4A opposed requirements for historical records of positive drug and alcohol test results or of a refusal to take the test. A4A suggested Congress may have intended to reference §§ 120.111(a) and 120.219(a), which only require certain records be retained. The

<sup>56</sup> Alternative 4 would require air carriers and operators to report present and future pilot records to the PRD, but continue to send historical records under PRIA until the PRD has 5 years of pilot records (by the start of 2025, the PRD would have data from 2020 to 2024), at which point PRIA could be discontinued. 85 FR 17701, March 30, 2020.

commenter stated that neither of these sections require the return-to-duty tests for more than a year, and for this reason, the FAA cannot expect all carriers to have retained more than one year of these records.

A4A commented that the proposed regulation captures significant historical records that are not relevant to the hiring determination. The commenter also stated that, because of the significant burden of providing historical records and the nominal value of doing so, the FAA should not subject carriers to undisclosed or future intention to report additional historical information. One commenter noted that recordkeeping obligation of fractional operators in § 91.1027(a)(3) and (b) is to maintain records for a minimum of 12 months.

CAPA noted the backfilling of past pilot records accurately could be time consuming and expensive, if not impossible, and future guidance on recording training events that might result from this new rule may not translate accurately to previous recordkeeping practices. This commenter argued a requirement to provide historical records during the current COVID-19 public health emergency is unreasonable, and the new regulation should provide a consistent methodology to record and report data and have a defined future starting point.

The FAA received other comments on historical record reporting format; these comments are addressed in Section V.C.3. regarding the format for reporting records.

#### ii. FAA Response

As discussed extensively in the NPRM, the FAA is required by statute to include historical records in the PRD and does not have discretion to adjust the dates or records that the PRD must include. A4A's analysis disregarded critical text in 49 U.S.C. 44703(i)(4). The subsection cited in the PRD Act, particularly (h)(4)(B)(ii)(II), requires air carriers and other persons to report "[r]ecords that the air carrier or other person is maintaining, on such date of enactment pursuant to subsection (h)(4)." As stated above, subsection (h)(4) encompasses the 5-year period preceding the enactment of the PRD Act. Alternative 4 was not accepted for legal reasons. This alternative was discussed per the initial Regulatory Flexibility Analysis of impacts on small entities prepared for the NPRM as a means of addressing potential cost. At the time of the NPRM, the FAA presented Alternative 4 as a potentially legally permissible option, but on further review, determined that this was not the

case. If it were legally permissible, Alternative 4 might be a less costly solution than the final rule; however, given the lack of available data, the FAA is not able to ascertain whether including historical records only in a manner that mimics PRIA would achieve the purpose of the PRD Act. This final rule provides the lowest cost legally-permissible solution. The FAA will include a summary of commenters' concerns regarding the lookback period for historical records in its next triannual report to Congress, as set forth in 49 U.S.C. 44703(i)(12).

Regarding drug and alcohol testing records, Section IV.C.5. contains a response to A4A's statement regarding recordkeeping requirements for return-to-duty test results.

The FAA adopts this regulation as proposed, with some changes. Paragraph (c) is revised to list the specific types of operators that do not have to comply with the historical records reporting requirement. That group is the same as from the NPRM, but now more clearly defined. Additionally, the deadline for reporting historical records is now three years and 90 days after publication of the rule to coincide with sole compliance with part 111. The FAA also added a provision to establish interim timelines for historical records reporting. The FAA understands that operators uploading historical records may have significant records to provide to the PRD. To facilitate a PRD transition that focuses on the most relevant records in accordance with concerns expressed by the NTSB and the Families of Continental Flight 3407, the FAA will prioritize uploading historical records that date on or after January 1, 2015. Those historical records must be uploaded within two years of the date of publication of the final rule. All other historical records must be uploaded prior to the last date of PRIA usage, which will be three years and 90 days after publication of the final rule.

The section will include opportunity to request deviation from the compliance dates provided in (d) of this section. The FAA will consider providing deviations based on an evaluation that the delay in uploading historical records is due to circumstances beyond the control of the air carrier or other operator and that such a delay would not have an adverse effect on safety. Any operator seeking a deviation must include all information listed in subparagraph (2) in order for the FAA to be able to consider the request for deviation. The Administrator may terminate the grant of deviation at any time upon notice to the operator.

During the term of the deviation, the operator must continue to retain historical records for reporting to the PRD and would be required to provide individual pilot records upon request, if a request arises.

The FAA intends to engage with the responsible persons for each subject entity upon approval of a responsible person's application. The FAA is eager to begin the implementation process. The FAA will work with responsible persons to facilitate setting up PRD user accounts and to begin mandatory FAA records review. Over the course of the next year, the PRD program manager will also work closely with responsible persons from reporting entities to ensure technical challenges are overcome along the path to compliance. AC 120-68J accompanies this final rule, and further guidance will continue to follow as the implementation process progresses. The FAA is committed to working with industry to facilitate a smooth transition from PRIA to PRD and to ensure that all pertinent records, as required by the statute, are included in the PRD. Over time, once contemporaneous reporting is ongoing for five years and PRD compliance is normalized, the FAA expects operators will benefit from a cost savings.

The remainder of § 111.255 is adopted as proposed.

#### D. Subpart D—Pilot Access and Responsibilities

##### 1. Applicability—Section 111.300

The FAA proposed in the NPRM that subpart D would apply to pilots holding an airline transport or commercial pilot certificate under 14 CFR part 61, as well as any remote pilots operating with a part 107 certificate or any individual who is employed as a pilot by an operator of a public aircraft. As adopted, this subpart will apply to any pilot meeting the criteria in § 111.1, regardless of the certificate, in accordance with revisions made for consistency with § 111.1. The FAA notes that in response to a comment from AOPA about whether pilots without a commercial certificate would be able to access their records: Only pilots that would be employed by an operator subject to this part would have industry records in the PRD. Any other records would be FAA records with which the pilot would likely already be familiar.

##### 2. Application for Database Access—Section 111.305

In this section, the FAA proposed regulations governing pilot access to the PRD and the minimum information



necessary to gain access. The FAA also proposed to require submission of an application seven days prior to the anticipated date of access and that continued access would be subject to compliance with § 111.25.

#### i. Comments Received

One commenter stated the proposed requirement for pilots to provide a current U.S. mailing address and telephone number would prevent many pilots, who live outside the U.S. but are employed by U.S. air carriers, from being able to access their database records. Furthermore, it may inhibit pilots who live abroad but hold FAA-issued airman certificates from applying for jobs with U.S. based companies, as companies might not seek to work with paper-based release from liability agreements that would be required for access to a pilot's records. This commenter recommended the FAA allow those pilots access to the PRD through another means of validation that does not require a U.S. mailing address.

#### ii. FAA Response

The FAA adopts § 111.305 as proposed with three changes. The first change is that a pilot must first request access to the PRD for the purposes listed in § 111.305(a) if the pilot is requesting access to the pilot's own records, except as provided in § 111.315(c). Second, in response to concerns from commenters about the requirement for a U.S. mailing address, the FAA determined that for purposes of this regulation, a requirement for the pilot to have a U.S. mailing address is unnecessary. However, the FAA notes that system capabilities may be functionally limited for web access outside the United States. The FAA acceptance of an address does not guarantee an ability to access the PRD while located physically outside the United States. Third, the FAA removed the provision proposed in (d), which was duplicative of the denial of access provision adopted at § 111.25.

#### 3. Written Consent—Section 111.310

In § 111.310, the FAA proposed to require air carriers and other operators obtain consent from a pilot for review of both PRD records and any State motor vehicle driving records about that pilot. The FAA amends proposed § 111.310 to include affirmation of pilot employment history dating back five years. Inclusion of this pilot employment history addresses concerns from commenters, and in particular the NTSB, that there could be a gap in history for certain pilots, particularly if not all pilot records are uploaded

contemporaneously, as discussed in Section V.C regarding § 111.215. By requiring a pilot to provide an affirmation that their employment history for five years preceding the date of consent is accurate and complete and also by requiring employers to upload records that indicate problematic pilot performance, the FAA will ensure that a potential employer has access to all pilot records for review prior to permitting the pilot to begin service. The FAA otherwise adopts § 111.310 without substantive changes. The FAA did not receive any comments specific to this provision.

#### 4. Pilot Right of Review—Section 111.315

The PRD Act provides a statutory right of review for a pilot of his or her records. The FAA proposed to codify this right to review in § 111.315. The pilot has the right to review both the pilot record reflected in the PRD, as well as a copy of any State motor vehicle driving records that may have been provided to a prospective employer. The FAA adopts this section substantively as proposed, and adds paragraph (c), which allows a pilot to submit a request to the FAA so that the pilot can review all records contained in the PRD pertaining to that pilot, without credentials issued in accordance with § 111.305. The PRD record would be transmitted external to the database, so the pilot could access his or her record without accessing the PRD database. The FAA did not receive any comments specific to this provision.

#### 5. Reporting Errors and Requesting Corrections—Section 111.320

In the NPRM, the FAA proposed to require operators to have a process enabling a pilot to report errors and provide corrections to the pilot's PRD record. This process would involve flagging the record as incorrect and submitting comments explaining why that record is incorrect. The FAA would also flag that record as "in dispute" if a disagreement exists with respect to the content of the record. It would remain "in dispute" until resolution of that dispute between the pilot and an air carrier or other operator is complete.

The FAA reorganized this section to delete proposed (a) and (b). As the PRD Act requires the Administrator to provide an opportunity for an individual to submit written comments correcting his or her record in the PRD, a separate requirement in this section is not necessary and paragraph (a) is removed. Furthermore, proposed paragraph (b) was duplicative of

proposed paragraph (c), and therefore removed.

Paragraph (a), as adopted, requires a pilot to report any error or inaccuracy to the PRD in a form and manner acceptable to the Administrator. If the record was entered by a current or former employer, the pilot can use the PRD to flag a record as incorrect. This request will go through the PRD to the reporting entity. The PRD administrator will flag an FAA record manually, if disputed by the pilot, but that dispute resolution process occurs in the FAA system where the original record resides, such as CAIS or EIS. To correct an error or inaccuracy in a record, the pilot would need to request a correction under the Privacy Act. For FAA records, the AC 120–68J includes a description of the appropriate office to contact for each type of FAA record to request correction through the Privacy Act.

The process of adding a notation to a pilot record disputed by the pilot is automatic. The FAA does not review requests for notation. For discussion of further comments regarding dispute resolution, please see Section V.C.11.

#### E. Other Amendments

The FAA proposed to amend § 91.1051 to replace the pilot safety background check required by this section with compliance with part 111. The FAA instead removes § 91.1051, effective upon September 9, 2024, and consolidates applicability for part 111 in § 111.1. The FAA also withdraws proposed amendments to parts 91, 121, 125, and 135, for the same reason.

The FAA received comments on this topic from the PlaneSense commenters. These commenters indicated that fractional operators have an obligation under current § 91.1051 to conduct a pilot safety background check within 90 days of hiring a pilot, and the operator must request FAA records and records from previous employers spanning the prior 5 years of the pilot's flight-related employment records. These commenters note this section does not impose a recordkeeping requirement on the fractional operator, as § 91.1027 imposes that obligation.

Fractional operators would comply with the PRD as set forth in the applicability of part 111. A fractional operator would begin reviewing records in the PRD one year after the date of publication of the final rule and continue to comply with § 91.1051 where records are not yet available in PRD until three years and 90 days after the rule.



#### F. Other Comments

##### 1. Comments on Requests To Extend the Comment Period or Provide Further Rulemaking Documents

Several commenters, including the NBAA, Cargo Airline Association, Ameristar, Experimental Aircraft Association, and the National Air Transportation Association, requested that the FAA extend the public comment period. Many of these commenters indicated they needed more time to review the proposed rule and prepare their responses to the many detailed questions that the FAA posed, particularly because the proposal was published during the unprecedented COVID-19 public health emergency, which has affected the air transportation industry.

NBAA commented that the significant number of requests for information by the FAA preceding the NPRM, and the contradictions between the various documents supporting the proposal, suggests the FAA should have published an advance notice of proposed rulemaking. NBAA suggested developing a supplemental notice of proposed rulemaking (SNPRM) or holding a public hearing may result in a more effective rulemaking effort and alleviate some industry concerns. For these reasons, NBAA recommended the FAA issue a SNPRM to reflect industry input on the FAA's list of questions.

##### 2. FAA Response

The FAA refers commenters to its Denial Letter for Extension of Comment Period (FAA-2020-0246-0038), which the FAA posted to the rulemaking docket on June 12, 2020. The FAA reiterates this rationale and emphasizes the FAA's determination to move forward with adoption of this rule. This final rule clarifies specific points of confusion raised by commenters in response to the NPRM. Moreover, the FAA will work closely with industry to ensure a common understanding of the regulatory requirements in part 111.

##### 3. Comments on Electronic Records, LOAs, MSpecs, and OPSpecs

NBAA commented that, by implementing an electronic PRD, the FAA has, by example, determined electronic records are valid and constitute sufficient evidence of regulatory compliance. NBAA asserted if the FAA mandates that air carriers, operators, and other entities use and submit electronic records through the PRD but also requires authorization to use electronic recordkeeping through LOA, MSpec, or OpSpec, the FAA must include in its economic analysis the cost

of preparing policies and procedures for electronic recordkeeping, then requesting authorization for the LOA, MSpec, or OpSpec, plus the ongoing cost of maintaining electronic records, or risk establishing an unfunded mandate.

##### 4. FAA Response

The FAA acknowledges receipt of this comment but notes that these points and the associated costs are beyond the scope of this rulemaking.

#### G. Comments Related to Regulatory Notices and Analyses

The FAA received comments regarding costs associated with reporting records, the scope of applicability of part 111, the benefits of this rule, and the FAA's assumptions and data concerning both costs and the Paperwork Reduction Act.

##### 1. Comments on Costs Associated With Reporting Historical Records

A4A stated it agrees generally with the potential benefits of the proposed rule but asserted the FAA significantly underestimated the costs of the rule. A4A stated that it surveyed its members to respond to the FAA's requests for comments on the impact of the proposed rule, but that it faced several challenges in collecting the information it sought.

A4A noted that in the regulatory impact analysis of the proposed rule, the FAA states it anticipates most existing electronic record systems can export data through XML for uploading into the PRD and that carrier export utilities need to be configured initially to match the expected fields of the PRD. A4A said that estimating costs for what to report, but not how to report it, is extremely challenging, especially given the diversity of record formats over the 15-year historical records period. A4A described challenges such as a lack of technical requirements for reporting records accompanying the proposal and the absence of a pilot program.

A4A noted that its member survey resulted in 8 out of 10 members providing extensive information on the impact of the proposed rule, with descriptions of how the carriers would comply, the number of full-time employees that would be needed to comply, and cost estimates. Those eight members included four large part 121 carriers and four mid-size part 121 carriers. A4A estimated the average cost for a large part 121 carrier to transfer historical records electronically to be \$602,875. A4A estimated the average cost for a mid-size part 121 carrier to

transfer historical records to be \$175,000.

A4A noted that its member survey revealed that almost all carriers store electronic documents in different systems for different categories of documents. A4A suggested carriers will have to engage a variety of software experts to advise them on how to transfer the information that the FAA seeks.

Other commenters expressed concern about the cost to convert historical records to XML. Noting that most operators have some form of digital record such as a PDF, one commenter said allowing bulk uploads of such records would alleviate the economic impact on small operators substantially. The commenter also recommended allowing operators to send PDF copies of records to the FAA, which can then convert them into any format the FAA feels is appropriate. The commenter recommended taking advantage of existing recordkeeping requirements, such as part 142 training center records, to populate the database and reduce the burden on part 91 operators.

A4A also believes that the FAA underestimated costs for the manual entry of historical records. A4A stated that, based on its member survey, the FAA should use the maximum estimated historical records as the basis for determining the cost of manual entry of historical records into the PRD because that estimate more accurately reflects the number of manual records.

A4A also urged the FAA to correct its cost-per-pilot estimate to enter manual records to ensure realistic manual entry burdens are captured. The commenter recommended the FAA use an average of 20 minutes for manual entry of a pilot training/checking record, 15 minutes to set up a new pilot in the PRD, and 10 minutes to input manually both disciplinary records and termination events.

A4A also commented that the regulatory impact analysis for the proposed rule did not include costs to retrieve, search, and review historical files and that the FAA limited the costs of manually reporting historical records to the cost to type the data into the PRD once it has been collected. The commenter stated this grossly underestimates the actual burden to air carriers to report historical data manually to the PRD, particularly for historical drug and alcohol testing records, and the FAA should include such burden in its analysis. A4A encouraged the FAA to reassess its cost analysis for manually reporting drug and alcohol testing records.

A4A estimated the number of pilots who have worked at covered carriers since 2005 that are still alive is at least 130,000. A4A calculated total labor costs of \$540 to input a single pilot's historical records into the PRD, then multiplied these labor costs by 130,000 pilots to arrive at an estimate of \$70,200,000 in total costs for part 121 carriers to retrieve, search, and review historical documents and ensure sensitive information not required by the PRD is excluded. This estimate includes both manual entry and electronic data entry. A4A recommended that, given these substantial additional costs, the FAA should eliminate the requirement to provide historical documents or, in the alternative, require no more than 5 years of historical documents from the final rule compliance date.

An individual commented on the FAA's estimate for the time it would take to enter a pilot's information manually, estimating instead that it would take approximately an hour per pilot. The commenter noted it has paper records, so it will have to find the records, sort through years of training certificates, and then enter records going back 15 years for each pilot. The commenter noted that 40 percent of its pilots have been employed with the company for more than 10 years. The commenter said that if it goes back 15 years, it would have to enter records for 251 part 121 pilots alone. The commenter noted that entering records for these 251 pilots would take 6.3 weeks of doing nothing but data entry. The commenter called this overly burdensome and expensive.

A4A recommended that the FAA adopt Alternative 4 from the initial Regulatory Flexibility Analysis as the final rule.<sup>57</sup> A4A stated that Alternative 4 is the most effective option for capturing historical records. A4A stated that this would only require accessing records through both the PRD and PRIA for 5 years, as opposed to 2 years under the proposed rule. A4A stated the benefit of not having to input 18 years of pilot records would outweigh the burden of accessing pilot information through both PRIA and the PRD for three more years. ALPA also supported Alternative 4, and quoted the PRD ARC stating pilot records from training events accessed more than 5 years ago

would be of no value to the hiring process.

A4A also commented that it is crucial for the FAA to stand up a working group immediately after a final rule is published. Further, A4A noted that, even though carriers may have some historical records in electronic format, this does not guarantee they can convert such records for the PRD. A4A stated none of its members has its drug and alcohol records systems connected to other systems; accordingly, the carriers will have to configure separately each set of historical records for reporting the PRD. A4A estimated the costs of reporting historical records will multiply based upon the number of systems from which an air carrier must collect and report data to the PRD.

## 2. FAA Response

The FAA has updated the regulatory impact analysis of the final rule with data A4A provided for increased costs of reporting records to the PRD and the costs of searching, retrieving and reviewing historical records. Details are provided in the comment responses below. The FAA also updated the regulatory impact analysis of the final rule using the electronic data costs referred to above for part 121 operators. The other commenters did not submit data on the costs to convert historical records to XML.

The FAA made the decision not to accept PDF because of data storage concerns and because personal information would have to be redacted; however, as mentioned previously, the FAA will provide a means to accomplish electronic batch upload of records. As discussed in section V.C., the PRD Act does not permit record reporting by part 142 training centers, as the PRD Act is restricted to entities that employed a pilot.

In the final rule, the FAA includes the cost for manual entry of drug and alcohol testing, verification of NDR search, and pilot disciplinary actions, where required. The FAA does not agree that it should use the maximum estimated historical records as the basis for determining the cost of manual entry of historical records. The final rule analysis continues to use the average of minimum and maximum estimated historical records.

The FAA includes the cost of entering disciplinary and termination records using 10 minutes as the time to enter each of these record types, as suggested by A4A. The FAA does not include the cost of setting up a pilot in the PRD for the first time, as it will occur via an automated script from the airman registry. The FAA does not agree with

A4A's recommendation to use 20 minutes for manual entry of a pilot training record; instead, the FAA uses an average of 4 minutes to enter this type of record. This estimate of 4 minutes does not include the time it might take to locate the record from the official record keeping system. A4A appears to capture this time in its estimate of supplemental costs, which includes the cost to retrieve, search and review historical records. The FAA incorporated A4A's supplemental cost of \$70.2 million in the final Regulatory Impact Assessment (RIA), available in the docket for this rulemaking.

The FAA has increased the cost of retrieving, searching, and reviewing historical records for part 121 operators based on data provided by A4A, as explained below. While the FAA included a supplemental cost of reporting historical records for the NPRM, the FAA accepted A4A's estimate that it would cost part 121 operators \$70.2 million to retrieve, search, and review historical documents and ensure sensitive information not required by the PRD is excluded. For the final rule, the FAA updated its analysis to include this cost for part 121 operators.

The FAA acknowledges the lower costs of Alternative 4 but believes the technological capabilities of the PRD will, in a few years, reduce concern over electronic upload of historical records. The FAA considered all comments received requesting a different interpretation of the PRD Act's requirement to include historical records and maintains that the statute is explicit with respect to which records must be included, as discussed in Section V.C.12.

The preamble of this rule includes discussion regarding the plans the FAA has for providing information to industry after publication of the final rule, beginning with the first compliance date for submitting a responsible person application, which is 90 days after publication of the final rule. The FAA also commits to providing a method for electronic transfer of records prior to the sunset of PRIA.

## 3. Comments on the Impact to Part 91 Operators

GAMA, NBAA, the FL Aviation Corp., Cummins, Inc., and more than 500 individuals commented on the costs and other burdens the proposed recordkeeping and reporting requirements would impose on part 91 operators. Most of these commenters asserted that the proposed rule would impose significant costs and other

<sup>57</sup> Alternative 4 would require air carriers and operators to report present and future pilot records to the PRD, but continue to send historical records under PRIA until the PRD has 5 years of pilot records (by the start of 2025, the PRD would have data from 2020 to 2024), at which point PRIA could be discontinued. 85 FR 17701, March 30, 2020.

burdens on these operators with little-to-no associated benefits.

GAMA commented that the administrative burden and associated cost of recordkeeping imposed on part 91 operators, which are not currently subject to the same recordkeeping requirements as part 121 and part 135 operators, is unreasonable because these operators typically do not benefit from the information in the PRD.

NBAA stated the proposed rule lacks a robust analysis of the effects on part 91 operations and ignores many consensus recommendations of the PRD ARC, resulting in a significant burden on numerous small entities with no clear nexus to part 121 carrier hiring. NBAA recommended that the FAA either remove part 91 operators from the rule or conduct a more accurate cost-benefit analysis in accordance with the Administrative Procedure Act and Executive Order 12866. NBAA also disagreed with the FAA's claim that the proposal would not require operators to collect new data for entry into the PRD and they and other operators pointed out that part 91 operators currently have no regulatory requirement to maintain certain records. These commenters contended that the new recordkeeping and reporting requirements would therefore require operators to revise completely current procedures they have used effectively for years, which will be costly.

NBAA also commented that the FAA considers initial compliance for part 91 operators but includes no annual costs of compliance and provides no insight into the assumptions that built the costs or analysis of part 91 training and checking events per year. NBAA asserted that the assumption that part 91 operators maintain electronic databases is false.

NASA's Aircraft Management Division stated that the level of data provided to the PRD is excessive and requires a recurring enormous effort. The commenter noted that NASA's primary records source is a paper-based personnel training and qualification file for each pilot. The commenter estimated that the rule's burdensome recurring data requirement would add a significant cost to NASA of approximately \$1 million annually.

An individual commented that the FAA's cost analysis ignores the increased cost to part 91 operators and is therefore not comparable to the current PRIA structure, rendering it useless for cost savings comparison. This commenter also faulted the cost analysis for not estimating overall costs on a per user basis. The commenter questioned whether the FAA estimated

the total number of users and what this rule would mean to each one. The commenter said it is incorrect to suggest there is no societal cost when there is no estimate on the burden to the individual user, especially ones who must absorb additional costs (part 91), rather than simply increasing ticket prices to cover the costs, as the scheduled air carriers have done.

The FL Aviation Corp. expressed concern that the cost of transaction requests will triple their current cost of responding to record requests. The commenter appears to be referring to user fees. The FL Aviation Corp. also asserted that, without any background data or information, the FAA's cost estimate represents nothing more than opinions or speculation and appear arbitrary, especially given that part 91 operations have never previously been included in the records sweep.

#### 4. FAA Response

The FAA has reduced substantively<sup>58</sup> the reporting requirements and therefore costs for corporate flight departments, public aircraft operations, and air tour operators in the final rule. These operators will only be required to provide records upon request from a hiring air carrier, unless the records reflect termination or certain disciplinary actions, in which case these operators must report the records contemporaneously. In addition, air tour operators must report drug and alcohol records contemporaneously.

The proposed rule required reporting only of records that the operator had accumulated; it did not propose that operators collect new data. The final rule as adopted also does not propose recordkeeping requirements that diverge significantly from PRIA; therefore, the FAA does not agree operators would have to revise current procedures, other than to enter records to the PRD, as required by the rule that they have accumulated.

For the NPRM, the FAA erroneously assumed that corporate flight departments maintain all records in electronic databases and assumed that all records would transfer to the PRD in the first year. The FAA has reconsidered this assumption and, in this rule, includes annual costs to enter records manually for all operators.

The FAA disagrees that the cost analysis ignores the increased cost to part 91 operators. The FAA detailed these costs in the analysis of the

proposed rule and has updated them in this final rule. The FAA estimated cost savings due to discontinuation of PRIA and the costs of reporting records to the PRD. The FAA presents the distribution of costs over operator types in the analysis along with an estimate of the number of users. The FAA estimates some costs on a per record basis. Some operators may choose to pass these additional costs on in increased ticket prices and some may absorb these costs. Regardless, these costs are captured in the analysis.

This rule does not include the user fee the FAA had proposed to include. Therefore, this rule does not estimate the cost of transaction requests.

The FAA documented its assumptions and sources in the analysis for the proposed rule. When data was not available, the FAA relied on input from subject matter experts.

#### 5. Comments on the Benefits of the Rule

NBAA stated all the benefits of the rule identified by the FAA apply to part 121 and part 135 air carriers. NBAA said there are no benefits for part 91 and part 125 operators that would be subject to this rule, only burdens and costs.

A4A disagreed with the FAA's assumption that one of the benefits of the NPRM is to lower the potential of inaccurate interpretation of pilot records by allowing for easier reading of pilot records, as the PRIA records might sometimes be handwritten and difficult to read. A4A said this is not a benefit of the PRD because the same concern exists with PRIA; carriers will have to interpret the same difficult-to-read handwritten files to comply with the PRD. A4A also identified an additional risk of incorrect or misinterpreted information being entered into the PRD and remaining there for the life of the pilot.

#### 6. FAA Response

This rule responds to a statutory requirement and was not motivated by a purpose to benefit one particular operator type over another; instead, Congress directed parameters for who would be reporting entities and reviewing entities. As a result of this rule, operators will be better prepared to make informed hiring decisions to support aviation safety. Although files may still be difficult to read, the FAA assumes that it is not as difficult for an operator to interpret its own historical records as it would be for an operator to interpret another operator's historical records.

<sup>58</sup> However, estimated costs the FAA includes in this final rule are higher than those estimated in the NPRM because the FAA considered data on part 121 costs submitted by a commenter.

## 7. Other Comments on Assumptions and Data

A4A stated the FAA must revise its cost analysis to correct the assumption that if a carrier has the FAA's approval for a computer-based recordkeeping system with OpSpec A025,<sup>59</sup> then all records that carrier must upload to the PRD are already in an electronic format. A4A noted that, while a carrier must obtain A025 to use an electronic recordkeeping system to ensure the same data integrity used in a paper system, A025 authorization does not mean that every carrier system is electronic. A4A said its member survey revealed that many human resource files containing disciplinary records or separation records are paper-based. Furthermore, A4A noted that even carriers that store human resource records electronically responded that they would need to enter information manually into the PRD because human resources files contain sensitive information that cannot be shared.

A4A noted the FAA's estimate excludes transition upgrade training, which the FAA explained is because it does not know how frequently pilots train on new aircraft, but expects such training is infrequent. A4A stated the results of its member survey indicate that a mid-size and large part 121 carrier averages between 1,200 and 3,000 transition training events per year. A4A asked the FAA to amend the analysis to reflect this omitted data to assess the true impact and cost of this rulemaking.

## 8. FAA Response

The FAA acknowledges some records it assumed to be entered electronically might have to be entered manually and the costs of manual entry may be underestimated for this reason. It is not clear from the A4A comment how many of these events will result in records required for the PRD. A transition-training curriculum consists of multiple training events. This number varies by approved training program. An event might be a ground school session or simulator session. All the events together make up the curriculum. After the pilot finishes all the events, they are considered to have completed the training curriculum. The PRD only accepts completion (or withdrawal) of the training curriculum. It does not accept records of each event that make up the curriculum. In other words, the

PRD accepts one record documenting that the pilot finished the curriculum, not multiple records detailing each event in the curriculum. A4A's comment is unclear concerning whether the basis of the estimates is the count of transition curricula or the number of events inside the curriculum.

## 9. Comments on Paperwork Reduction Act Burden Issues

One commenter stated that mandating dual recordkeeping for 2 years and 90 days post-implementation effectively doubles the workload for covered employers, which does not meet the requirements of the Paperwork Reduction Act. Another commenter remarked generally that the requirements of the proposed rule seems to contradict the purpose of the Paperwork Reduction Act.

## 10. FAA Response

PRIA is maintained until the PRD is populated with the minimal records necessary to ensure that hiring air carriers have access to the records they need and that no gap exists. However, if the operator updates PRD with records before PRIA is phased out the operator does not have to report records via PRIA. There should be no dual reporting requirements, because an operator would provide records via either PRIA or PRD until PRIA is phased out. The FAA assessed the baseline incremental change in costs in the analysis of the proposed rule, noting that cost savings do not begin until PRIA is phased out. In addition, the FAA acknowledged that the analysis in the NPRM potentially overestimates costs as operators can transition to PRD before the date when PRIA is discontinued, yet cost savings are not captured until that date.

## VI. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. In addition, DOT rulemaking procedures in subpart B of 49 CFR part 5 instruct DOT agencies to issue a regulation upon a reasoned determination that benefits exceed 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. In developing U.S. standards, this Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). The FAA provides a detailed Regulatory Impact Analysis of this final rule 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 this rule: (1) Has benefits that justify its costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified previously. These analyses are summarized in this section.

### A. Regulatory Evaluation

#### 1. Benefits

This rule promotes aviation safety by facilitating operators' consideration of pilot skill and performance when making hiring and personnel management decisions by using the most accurate and complete pilot records available and by making those records accessible electronically. The rule requires use of the PRD that includes information maintained by the FAA concerning current airman certificates with any associated type ratings and current medical certificates, including any limitations or restrictions to those certificates, airman practical test failures, and summaries of legal enforcement actions. The PRD will contain air carrier, operator, and FAA records on an individual's performance as a pilot for the life of the individual that could be used as a hiring tool in an air carrier's decision-making process for pilot employment.

<sup>59</sup> OpSpec A025—Extension of Due Date for Required Action by Notice N 8900.368, OpSpec/MSpec/TSpec/LOA A025, Electronic Signatures, Electronic Recordkeeping Systems, and Electronic Manual Systems, available at [https://fsims.faa.gov/wdocs/notices/n8900\\_395.htm](https://fsims.faa.gov/wdocs/notices/n8900_395.htm).

By requiring that pilot records be entered into the PRD and reviewed by the hiring air carrier, this rule will:

- Promote aviation safety by facilitating operators' consideration of pilot skills and performance when making hiring decisions by using the most accurate and complete pilot records available and by making those records accessible electronically. As previously discussed, a single algorithm does not exist that can tell the potential employer whether it should hire a pilot based on a ratio of satisfactory and unsatisfactory flight checks. However, providing this information electronically about the airman will assist the potential employer in making a hiring decision in a timelier and less cumbersome manner than is possible with PRIA.

- Allow for speedier retrieval of pilot records from the PRD than is possible with PRIA. Under PRIA, the hiring air carrier requests records from sometimes multiple carriers and waits to receive the records. With the PRD, the operator will merely log on to the database and, in most cases, search for the records.

- Lower the potential of inaccurate interpretation of pilot records by allowing for easier reading of pilot records, as the PRIA records might sometimes be handwritten and difficult to read.

- Allow for easier storage and access of pilot records than PRIA.

- Allow pilots to consent to release and review of records.

2. Cost Savings

This rule results in recurring annual cost savings to industry because the PRD will replace PRIA three years and 90 days after the rule is published. Under PRIA, air carriers, operators, and

pilots complete and mail, fax, or email forms to authorize requests for pilots' records to be provided. Under the PRD, most of this process occurs electronically. Over the 10-year regulatory period after the effective date of the rule (2021–2030), the present value cost savings to industry is about \$21.2 million or \$3.0 million annualized using a seven percent discount rate. Using a three percent discount rate, the present value cost savings to industry is about \$27.4 million over the 10-year period of analysis or about \$3.2 million annualized. After the discontinuance three years and 90 days after the rule is published, the annual recurring industry cost savings will more than offset the recurring annual costs of the rule.

3. Costs

i. Net Regulatory Costs of the Rule

After the effective date of the rule, operators will incur costs to report pilot records to the PRD and to train and register as users of the PRD. The FAA will incur costs of the rule related to the operations and maintenance of the PRD. Over a 10-year period of analysis (2021–2030), the rule results in present value net costs (costs less savings) to industry and the FAA of about \$67.0 million or \$9.5 million annualized using a seven percent discount rate. Using a three percent discount rate, the rule results in present value net costs of about \$71.0 million or about \$8.3 million annualized.

The cost driver of the rule is the reporting cost for air carriers to upload historical records before the discontinuance of PRIA three years and 90 days after the effective date of the rule. These up-front costs are

discounted less in terms of present values than the recurring cost savings that occur after the discontinuance of PRIA. These historical record reporting costs represent about 87 percent of the total costs of the rule.<sup>60</sup> As discussed previously, the statutory requirements limit FAA's discretion to reduce the requirements for operators to report historical records. This limits the FAA's ability to reduce the associated costs. However, the cost savings from the discontinuance of PRIA are expected to pay for these high upfront costs over the long run as the PRD becomes widely used.

ii. FAA Costs To Develop the PRD

In addition to future regulatory costs, the FAA has incurred costs to prototype and develop the PRD since 2010.<sup>61</sup> From 2010 to 2020, the FAA estimates the present value PRD development costs are about \$14.1 million or \$1.5 million annualized using a seven percent discount rate. Using a three percent discount rate, the present value PRD development costs are about \$18.0 million over the same period or about \$2.4 million annualized. In the context of analyzing the impacts of the rule, these are "sunk" costs that already occurred and cannot be recovered. These sunk costs are contrasted with prospective costs, which are future regulatory costs of the rule. The FAA presents these sunk costs to inform the public of the total PRD development and regulatory costs.

4. Summary of Benefits, Costs, and Cost Savings

The following table summarizes the benefits, costs, and cost savings of the rule to industry and the FAA.

TABLE 3—SUMMARY OF BENEFITS, COSTS, AND COST SAVINGS

Benefits				
<ul style="list-style-type: none"> <li>• Promotes aviation safety by facilitating operators' consideration of pilot skill and performance when making hiring and personnel management decisions.</li> <li>• Provides faster retrieval of pilot records compared to PRIA.</li> <li>• Reduces inaccurate information and interpretation compared to PRIA.</li> <li>• Provides easier storage of and access to pilot records than PRIA.</li> <li>• Allows pilots to consent to release and review of records.</li> </ul>				
Summary of Costs and Cost Savings * (\$Millions)				
Category	10-Year present value (7%)	Annualized (7%)	10-Year present value (3%)	Annualized (3%)
Costs .....	88.2	12.6	98.5	11.5
Cost Savings .....	(21.2)	(3.0)	(27.4)	(3.2)

<sup>60</sup> Based on the Regulatory Impact Analysis of the final rule, about 88% of the historical record reporting costs are incurred by part 121 operators.

<sup>61</sup> On August 1, 2010, Congress directed the Administrator to establish the PRD (Pub. L. 111–216, Section 203 (49 U.S.C. 44703(i)). OMB Circular A–4 asks agencies to consider costs of mandates

based on a pre-statutory baseline. The FAA provides discussion of these costs to inform the total PRD development and regulatory costs.

Summary of Costs and Cost Savings \*  
(\$Millions)

Category	10-Year present value (7%)	Annualized (7%)	10-Year present value (3%)	Annualized (3%)
Net Costs .....	67.0	9.5	71.0	8.3

\* **Table Notes:** Columns may not sum due to rounding. Savings are shown in parentheses to distinguish from costs. Estimates are provided at seven and three percent discount rates per OMB guidance. Industry and FAA costs are higher in the beginning of the period of analysis than industry cost savings that occur later in the period of analysis after the discontinuance of PRIA three years and 90 days after the rule is published. This results in larger annualized estimates of costs and net costs at a seven percent discount rate compared to a three percent discount rate.

5. Scope of Affected Entities

The entities affected by this final rule are: Part 119 certificate holders, fractional ownership programs, air tour operators, corporate flight departments, and PAO, as well as individual pilots.

6. Changes to the Regulatory Impact Analysis Since the Proposed Rule

The FAA updated its analysis for changes incorporated in the final rule and additional information and data identified during the comment period. The following is a summary of these changes.

- The analysis no longer includes the impacts of user fees. Industry will not incur user fees under the final rule. For the proposed rule, the FAA estimated the 10-year present value of the user fees were about \$13.2 million or \$1.9 million annualized using a 7 percent

discount rate in 2016 constant dollars. Using a 3 percent discount rate, the present value of the user fees were about \$16.3 million over 10 years or about \$1.9 million annualized.

- The analysis reflects reduced PRD reporting requirements that reduce industry costs in the final rule compared to the proposal for air tour operators, public aircraft operations and corporate flight departments.

- The analysis incorporated additional data from commenters to update costs for reporting historical records to the PRD, increasing the estimates of costs under the final rule as compared to the preliminary analysis of the proposed rule. In the proposed rule and the preliminary Regulatory Impact Analysis, the FAA requested comments and additional data on costs and data uncertainties.

- Reporting of records begins one year after the rule is published rather than beginning in the year of publication of the rule, providing more time for operators to prepare to report.

- Reporting of historical records back to year 2015 occurs in year 2 and the remainder in year 3, rather than an even distribution over 2 years.

- The analysis uses updated wage data.

The following table compares the net costs of the proposed rule as published, the net cost of the proposed rule with updates for cost data received from public comments, and the costs of the final rule with changes in requirements to reduce costs in addition to updates for cost data received from public comments.

TABLE 4—COMPARISON OF NET COSTS: PROPOSED RULE AND FINAL RULE  
[\$Million]

Net costs	Proposed rule	Proposed rule	Final rule
10-Year Present Value (7%) .....	12.8	80.8	67.0
Annualized (7%) .....	1.8	11.5	9.5
10-Year Present Value (3%) .....	11.5	87.8	71.0
Annualized (3%) .....	1.4	10.3	8.3

\* Updated for data from public comments.

+ Updated for changes in requirements and data from public comments.

The FAA analyzed the impacts of this rule based on the best publicly available data at the time of this writing. The FAA acknowledges uncertainty exists in estimating the costs of this rule, given the variety of operators and record-keeping practices.

The analysis of this rule reflects operator and industry conditions that predate the COVID-19 public health emergency. While there is currently a lack of data to forecast the timing of recovery from COVID-19 impacts relative to implementation of the rule, the analysis provides information on the types of impacts that may be experienced in the future as the economy returns to baseline levels.

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, Section 604 of the Act requires agencies to prepare a Final Regulatory Flexibility Analysis describing the impact of final rules on small entities.

The FAA has determined this final rule will have a significant economic impact on a substantial number of small entities. Therefore, under the requirements in Section 604 of the RFA, the Final Regulatory Flexibility Analysis must address:

- A statement of the need for, and objectives of, the rule;
- A statement of the significant issues raised by the public comments in

response to the initial regulatory flexibility analysis, a statement of the assessment of the Agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

- The response of the Agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

- A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

- A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

- A description of the steps the Agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the Agency which affect the impact on small entities was rejected.

1. Statement of the Need for and Objectives of the Rule

Following the Continental Flight 3407 accident, Congress enacted the Airline Safety and Federal Aviation Administration Extension Act of 2010, Public Law 111–216 (Aug. 1, 2010).<sup>62</sup> Section 203 of the PRD Act required the FAA to establish an electronic pilot records database and provided for the

subsequent sunset of PRIA. The PRD Act requires the FAA to ensure the database contains records from various sources related to individual pilot performance and to issue implementing regulations. It also amended PRIA by requiring the FAA to ensure operators evaluate pilot records in the database prior to hiring individuals as pilots. Congress has since enacted the FAA Extension, Safety, and Security Act of 2016 (FESSA), Public Law 114–190 (July 15, 2016). Section 2101 of FESSA required the FAA to establish an electronic pilot records database by April 30, 2017. This final rule implements those statutory mandates.

2. Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

A significant issue commenters raised was the concern that the proposed rule would impose significant burdens on small businesses with little-to-no associated benefits or could put small companies or flight departments out of business. Commenters were concerned about corporate flight departments and public aircraft operations, which the FAA considered along with air tour operators as potential gateway operators (*i.e.*, operators from which pilots would transfer to air carriers). Commenters, in addition to describing the excessive burden that the rule would impose, stated that it was infrequent that a pilot would leave employment with these types of operators to seek employment with an air carrier. The FAA assessed these concerns and reduced the burden for these operators by requiring only that these operators report records upon request from a hiring air carrier, with an

exception requiring that they report contemporaneous termination records and certain disciplinary records. Contemporaneous reporting of drug and alcohol records by air tour operators would also be required, even in the absence of a request for them.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

The Agency received no comments from the Chief Counsel for Advocacy of the Small Business Administration.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

This rule will affect substantial numbers of small entities operating under parts 91K, 121 and 135, air tour operators, entities conducting public aircraft operations, and corporate flight departments. There are approximately four dozen small part 121 carriers and two thousand small part 135 carriers and operators. All part 125 operators are small. Air tour operators are also typically small. These operators may consist of a couple of pilots flying less than five passengers per air tour. The FAA estimates that all fractional ownerships are large with revenues exceeding \$16.5 million. The FAA also estimates that entities conducting PAO are associated with large governmental jurisdictions. The FAA assumes that any corporation that could afford a corporate flight department would have in excess of \$16.5 million in revenues and is therefore a large entity. The table below offers more details on the operator types affected.

TABLE 5—SUMMARY OF SMALL ENTITIES IMPACTED

Type/part	Number of entities	NAICS code <sup>63</sup>	SBA size standard	Size
Part 121 Air Carriers.	76	481111—Scheduled Passenger Air Transportation; 481112—Scheduled Freight Air Transportation; 481211—Nonscheduled Chartered Passenger Air Transportation; 481212—Nonscheduled Chartered Freight Air Transportation.	Less than 1,500 employees.	45 small, 31 large.
Part 135 Air Carriers and Operators.	2,053	481111—Scheduled Passenger Air Transportation; 481112—Scheduled Freight Air Transportation; 481211—Nonscheduled Chartered Passenger Air Transportation; 481212—Nonscheduled Chartered Freight Air Transportation.	Less than 1,500 employees.	2050 small, 3 large.
Part 125 Operators	70	481219—Other Nonscheduled Air Transportation .....	Less than \$16.5M in revenues.	All small.

<sup>62</sup> Referred to as “the PRD Act” in this rule.

TABLE 5—SUMMARY OF SMALL ENTITIES IMPACTED—Continued

Type/part	Number of entities	NAICS code <sup>63</sup>	SBA size standard	Size
Part 91.147 Air Tour Operators.	1,091	481219—Other Nonscheduled Air Transportation .....	Less than \$16.5M in revenues.	All small.
Part 91.K Fractional Ownership.	7	481219—Other Nonscheduled Air Transportation .....	Less than \$16.5M in revenues.	All large.
Public Use Aircraft	323	481219—Other Nonscheduled Air Transportation .....	Large Governmental Jurisdictions.	All large.
Corporate Flight Departments.	1,413	481219—Other Nonscheduled Air Transportation .....	Less than \$16.5M in revenues.	All large.

\* **Table Note:** Size information is based on data available from eVID (FAA Management Information System, Vital Information Subsystem).

While this rule will affect a substantial number of small entities, the FAA maintains that small entities will be affected to a lesser extent than large entities. This is because costs are a function of size. For instance, costs to enter data on pilots manually depends on the number of pilots who work and have worked for the operator. Both air tour operators and part 125 operators are comprised entirely of small businesses. The FAA estimated that an average of about 3 pilots work for an air tour operator and 10 pilots for a part 125 operator. Air tour operators would not be required to report historical records and would incur a cost of \$43 per operator per year (or about \$14 per pilot per year), and part 125 operators would incur a cost of \$725 per operator (or about \$72 per pilot) per year.

5. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The rule requires air carriers, certain operators holding out to the public, entities conducting public aircraft operations, air tour operators, fractional ownerships, and corporate flight departments to enter relevant data on individuals employed as pilots into the PRD. The records entered into the PRD include those related to: Pilot training, qualification, proficiency, or professional competence of the individual, including comments and evaluations made by a check pilot; drug and alcohol testing; disciplinary action; release from employment or resignation, termination, or disqualification with

respect to employment; and the verification of a search date of the National Driver Register. Requirements for corporate flight departments, air tour operators and public aircraft operations, many of which are small businesses, have been reduced in the final rule to only require reporting of most records upon request. Contemporaneous reporting must occur for records concerning termination and disciplinary actions for public aircraft and air tour operators and corporate flight departments. In addition, drug and alcohol records for air tour operators are also always required. The types of professional skills needed are clerical skills for data entry, computer skills for electronic data transfer, management pilot skills for reviewing and summarizing pilot records, training and development skills, and human resource management skills.

6. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

By reducing reporting requirements on public aircraft and air tour operators and corporate flight departments, many of which are small businesses, the Agency has minimized the significant economic impact on small entities. This does not contradict the PRD Act.

The FAA considered the following four alternatives in Regulatory Flexibility Determination section of the proposed rule. In Alternative 1, the FAA considered requiring all of the past pilot historical data. This alternative was rejected because the FAA determined the proposed requirement would be sufficient to comply with the statute. In

Alternative 2, the FAA considered other options for the form and manner in which historical records could be submitted to the PRD by operators employing pilots. These options included permitting the submission of records in portable document format (PDF), JPEG, bitmap (BMP), or other similar electronic file formats; the submission of records using coded XML; or the submission of specified information through direct manual data entry. The FAA rejected this alternative because it would result in extraneous and possibly protected or sensitive information to be submitted to the PRD, could impose a burden on the FAA to review, and is beyond the FAA does not think Congress intended PRD to be a repository of all the information available on a pilot. In Alternative 3, the FAA considered interpreting the PRD Act broadly and requiring all employers of pilots to comply with the proposed PRD requirements, regardless of whether the information would be useful to hiring air carriers or not. The FAA rejected this alternative because it interpreted the requirement to apply to those most likely to employ pilots who might subsequently apply to become air carrier pilots. In Alternative 4, the FAA considered requiring operators report present and future pilot records to the PRD, but continue to send historical records under PRIA until the PRD has 5 years of pilot records, at which point PRIA could be discontinued. The FAA rejected this because the lack of a singular database would be detrimental to the purpose of the rulemaking and diminish efficiency of review of pilot records by employers who would have to access records through both PRIA and PRD. At the time of the NPRM, the FAA presented Alternative 4 as a potentially legally permissible option, but on further review, determined that this was not the case.

Below is a more detailed description of Alternative 2 and the reasons it was

<sup>63</sup> For definitions of the NAICS codes please refer to 2017 NAICS Manual, pg. 380 [https://www.census.gov/eos/www/naics/2017NAICS/2017\\_NAICS\\_Manual.pdf](https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf). Also, please note that these definitions may not completely align with the definitions set out in the FAA Code of Federal Regulations.



rejected. This alternative might have affected the impact on small entities.

The FAA considered options for the form and manner in which historical records could be submitted to the PRD by air carriers and operators employing pilots. These alternative options included permitting the submission of records in portable document format (PDF), JPEG, bitmap (BMP), or other similar electronic file formats; the submission of records using coded XML; or the submission of specified information through direct manual data entry.

While the submission of records in PDF, JPEG, BMP, or other similar electronic file formats might be most expedient and least costly<sup>64</sup> for some air carriers and operators, the FAA rejected this option for multiple reasons. First, the PRD ARC highlighted an issue with the contents of historical records, indicating that many historical records maintained by the aviation industry contain information “far outside” the scope of the PRD. The acceptance of such file formats (e.g., PDF, JPEG, or BMP) would allow a large volume of extraneous data to be submitted to the PRD, possibly including protected or sensitive information on individuals or an air carrier or operator. The FAA would be required to review each individual pilot record and redact information as appropriate. This review may cause the availability of the uploaded records to be delayed until such time that the FAA could redact inappropriate information, if any existed within the file.

In addition, the PRD should serve as an effective tool to assist an air carrier or operator in making hiring decisions, not as a catch-all repository for all existing information maintained by employers of pilots, or as a replacement for existing air carrier and operator recordkeeping systems. If an employer transmitted scanned documents or photographs of a pilot’s record to the PRD, a hiring employer could be overwhelmed by the amount of information provided for review, some of which might not be relevant to the hiring decision and could impede the hiring employer’s ability to consider relevant information quickly and efficiently.

The final alternative adopted is what was proposed in the NPRM with changes, one of which reduces record reporting requirements for PAO, air tour operators, and corporate flight

departments. The factual, legal, and policy reasons for the alternative adopted in the final rule are found in the preamble discussion preceding this section.

#### *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. This rule addresses a Congressional mandate to promote the safety of the American public and it does not create an unnecessary obstacle to foreign commerce.

#### *D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.”

The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Unfunded Mandates Assessment Reform Act do not apply.

#### *E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires agencies to consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains amendments to the existing information collection requirements previously approved under OMB Control Number 2120–0607. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these information collection amendments to OMB for its review.

*Summary:* The rule requires part 119 certificate holders, entities conducting public aircraft operations, air tour operators, fractional ownerships, and corporate flight departments to enter relevant data on individuals employed as pilots into the PRD. The records entered into the PRD include those related to: Pilot training, qualification, proficiency, or professional competence of the individual, including comments and evaluations made by a check pilot; drug and alcohol testing; disciplinary action; release from employment or resignation, termination, or disqualification with respect to employment; and the verification of a query of the National Driver Register.

*Use:* The information collected in accordance with 44703(i) and maintained in the Pilot Records Database will be used by hiring air carriers to evaluate the qualification of an individual prior to making a hiring determination for a pilot in accordance with 44703(i)(1).

The FAA summarizes the changes in burden hours and costs by subpart relative to the interim compliance dates of the rule. As previously discussed, air carriers and other operators currently comply with PRIA. The publication of this rule begins the transition to use of the PRD. For a modest duration of time, continued compliance with PRIA is required, to ensure appropriate, complete transition. The FAA also made changes to the regulatory text for compliance dates and added interim compliance markers in order to facilitate a smooth transition. These changes are discussed further in Sections V.A.2 and V.E. Where practical the FAA presents burden and costs over three years as typically presented for estimates of burden and costs for collections of information.<sup>65</sup>

#### 1. Subpart A General

##### i. Section 111.15 Application for Database Access

Air carriers and other operators subject to the rule will submit application for database access 90 days after the publication of the rule. The

<sup>64</sup> Submitting PDF, JPEG, BMP or similar electronic formats might be less costly because the operator would not have to transcribe records from one format to another.

<sup>65</sup> The FAA estimates the change in burden and cost for these amendments over three years to align with the three-year approval and renewal cycle for most information collections.

table below presents the number of users expected to apply for access to the PRD, the estimated time it will take each user to register, the hourly rate of the persons registering, and the estimated hour burden for all users to register.

TABLE 6—BURDEN FOR APPLICATION FOR DATABASE ACCESS \*

Users expected to apply/register	Respondents	Hourly rate	Time to register	Total costs	Total hours	Average costs per year *	Average hours per year *
Responsible persons .....	5,033	\$91.33	0.50	\$229,832	2,517	\$76,611	839
Pilots .....	175,860	46.28	0.33	2,685,804	58,034	268,580	5,803
Authorized Individuals .....	10,066	91.33	0.50	459,664	5,033	153,221	1,678
Proxies .....	1,904	91.33	0.50	86,946	952	28,982	317
<b>Total .....</b>	<b>192,863</b>	<b>.....</b>	<b>.....</b>	<b>3,462,246</b>	<b>66,536</b>	<b>527,394</b>	<b>8,637</b>

\* **Table Notes:** See the Regulatory Impact Analysis available in the docket for details on the hourly rates and costs. Average costs and hours are three-year averages.

2. Subpart B—Accessing and Evaluating Records

i. Section 111.240 Verification of Motor Vehicle Driving Records

Air carriers and participating operators must be able to provide supporting documentation to the Administrator upon request that a search of the NDR was conducted, and that documentation must be kept for five years. The FAA considers this burden de minimis.

3. Subpart C—Reporting of Records by Air Carriers and Operators

Each operator will report to the PRD all records required by this subpart for each individual employed as a pilot in the form and manner prescribed by the Administrator.

Subpart C of part 111 requires all part 119 certificate holders, fractional ownership operators, persons authorized to conduct air tour operations in accordance with 14 CFR 91.147, persons operating a corporate flight department, entities conducting public aircraft operations, and trustees in bankruptcy to enter relevant data on individuals employed as pilots into the PRD. Relevant data includes: Training, qualification and proficiency records; final disciplinary action records; records concerning separation of employment; drug and alcohol testing records; and

verification of motor vehicle driving record search and evaluation.

Under the Pilot Records Improvement Act (PRIA), operators are required to provide these records to another operator upon request; therefore, this rule will not require collection of new information.<sup>66</sup> This action contains amendments to the existing information collection requirements previously approved under OMB Control Number 2120-0607. Under this existing information collection, which is associated with PRIA and PRD, operators are currently required to maintain certain records in accordance with regulatory requirements and to maintain records that would be subject to PRIA in order to respond to PRIA requests. Under this action, industry would be required to report to the PRD those records that they are already required to collect. Therefore, the FAA has determined that this action amends the existing information collection only so far as to require submission of information to request access to the database and electronic or manual submission of the records already collected by industry. We estimate that burden here.

The rule requires that one year after publication new records be reported to the PRD. New records are all records generated as of that date.

As previously discussed, there are two methods for reporting data to the PRD. The first method is to transmit data electronically using an automated utility such as XML, so it can be read by both the user and the PRD. The second method is manual data entry using the same pre-established data field forms for each record type. The FAA estimated how many operators will likely report data directly from their own electronic databases. The FAA also estimated how many operators will likely enter data manually to the PRD. The following discussion summarizes the estimates of the burden and the cost of reporting records to the PRD.

i. Present and Future Record Reporting

Air carriers and operators will incur a burden to transfer pilot records electronically from their databases to the PRD. The burden includes the time required for operators to develop an encoding program to transfer records from their electronic databases via an automated utility to appropriate fields within the PRD.

The following table presents the number of respondents (operators), estimated hours, hourly rate, and the cost of electronic reporting, for electronic reporting of present and future records, both one-time burden and annual updating burden.

TABLE 7—ELECTRONIC REPORTING OF PRESENT AND FUTURE RECORDS \*

Operator type	Respondents	Hours per respondent	Hourly rate	Initial cost for electronic reporting	Annual cost for electronic reporting	Initial hours for electronic reporting/year	Annual hours
Small 121 .....	51	20	\$120	\$122,400	\$76,500	340	1,020
Mid-size 121 .....	13	35	75	34,125	19,500	152	260
Large 121 .....	4	400	89	142,400	6,000	533	80
<b>Total 121 .....</b>	<b>68</b>	<b>455</b>	<b>.....</b>	<b>298,925</b>	<b>102,000</b>	<b>1,025</b>	<b>1,360</b>
Small 135 .....	234	20	120	561,600	351,000	1,560	4,680
Mid-size 135 .....	2	35	75	5,250	3,000	23	40

<sup>66</sup> 49 U.S.C. 44703(h).

TABLE 7—ELECTRONIC REPORTING OF PRESENT AND FUTURE RECORDS \*—Continued

Operator type	Respondents	Hours per respondent	Hourly rate	Initial cost for electronic reporting	Annual cost for electronic reporting	Initial hours for electronic reporting/year	Annual hours
Total 135 .....	236	55	.....	566,850	354,000	1,583	4,720
Small 125 .....	18	20	120	43,200	27,000	120	360
Total 125 .....	18	20	.....	43,200	27,000	120	360
Part 91K .....	4	1,897	95	720,800	6,000	2,529	80
Total 91K .....	4	1,897	.....	720,800	6,000	2,529	80
Total .....	326	2,427	.....	1,629,775	489,000	5,258	6,520

\* Table Notes: See the Regulatory Impact Analysis available in the docket for more details. Estimates may not total due to rounding.

The following table summarizes the present and future pilot records to the burden and costs for operators to enter PRD manually.

TABLE 8—MANUAL ENTRY OF PRESENT AND FUTURE RECORDS

Type of operations	Hours	Cost	Respondents
Part 121 .....	141	\$12,269	8
Part 135 .....	6,993	609,006	1,817
Part 125 .....	192	16,654	52
Air Tours .....	16	1,464	1,091
Part 91K .....	214	18,552	3
PAO .....	21	1,831	323
Corporate Flight Department .....	106	9,265	1,413
Total .....	7,683	669,041	4,707
Average .....	2,561	223,014	1,569

ii. Historical Record Reporting

The rule requires that historical records will be reported to the PRD beginning one year after publication of the final rule. Parts 121 and 135 air carriers will report historical records

they have maintained back to August 1, 2005 through that date. Parts 125 and 135 operators and 91K fractional ownerships will report historical records they have maintained back to August 1, 2010 through one year after publication of the final rule. Those

operators with approved electronic databases will transfer data electronically. The table below summarizes the number of respondents, burden hours, and the one-time cost of electronic reporting.

TABLE 9—BURDEN OF ELECTRONIC REPORTING HISTORICAL RECORDS \*

Type of operations/size groupings	Respondents	Hours/Respondent	Hourly rate	Electronic reporting costs	Electronic reporting hours
Small 121 .....	51	20	\$120	\$122,400	1,020
Mid-size 121 .....	13	2,333	75	2,275,000	30,333
Large 121 .....	4	6,774	89	2,411,500	32,154
Total part 121 (1) .....	68	9,127	.....	4,808,900	63,507
Small 135 .....	226	20	\$120	542,400	4,521
Mid-size 135 .....	2	70	75	10,500	141
Total part 135 .....	228	90	.....	\$552,900	4,599
Small part 125 .....	18	20	\$120	43,200	360
Total part 125 .....	18	20	.....	\$43,200	360
Part 91K .....	4	385	\$95	146,200	1,539
Total Part 91K .....	4	385	.....	\$146,200	1,539
Total Burden .....	318	9,622	.....	\$5,551,200	70,068

\* Table Notes: (1) Includes carriers certificated under both parts 121 and part 135. Estimates may not total due to rounding.

The following table summarizes the burden and costs for operators to manually enter historical records to the PRD.

TABLE 10—MANUAL ENTRY OF HISTORICAL RECORDS

Type of operations	Respondents	Total hours	Total cost
Part 121 .....	18	1,439,468	\$71,025,356
Part 125 .....	33	853	80,370
Part 135 .....	1,912	95,354	9,162,087
Part 91K .....	5	5,748	544,279
Total .....	1,968	1,541,423	80,812,091

iii. Reporting Pilot Employment History

In addition to operators reporting pilot records, pilots will be required to enter five years of employment history at the time they give their consent for an air carrier to review their records. The PRD will provide the pilot an electronic

form including a pull down menu allowing access to air carriers, which should make it efficient for a pilot to complete the employment history form. If the former employer is on the list, the data prefills from FAA data. In the case that a former employer is not available

through the menu, the pilot can add the name of the employer and fill in the data. The FAA estimates it will take a pilot an average of 2 minutes to complete their employment history. The following table shows total costs for pilots to enter their employment history.

TABLE 11—BURDEN AND COST FOR REPORTING PILOT EMPLOYMENT HISTORY

Number of pilots	Hourly rate	Time to complete employment history	Cost to complete employment history
175,860 .....	\$46.28	2 mins	\$271,293

iv. Request for Deviation

Operators may request a deviation from the historical records reporting based on a determination that a delay in compliance, due to circumstances beyond control of the entity reporting historical records, would not adversely

affect safety. While the deviation is in effect, the reporting operator would report records upon request under PRIA. The FAA does not envision that it would grant deviation authority past the sunset date of PRIA, but if that situation were to occur, the FAA expects that an operator would still be required to

report individual pilot records upon request manually to the PRD during the term of the delay in uploading those records electronically.

The FAA estimates that one percent of part 121 and part 135 operators may request such a deviation in years 2 and 3 after the publication of the final rule.

TABLE 12—DEVIATION REQUESTS

Operator type	Respondents	Hours	Hourly rate	Total hours	Total cost
Part 121 .....	0.76	2	\$87.04	1.52	\$132
Part 135 .....	20.53	2	87.04	41.06	3,574
Total .....				42.58	3,706

The following table summarizes the total reporting burden and costs for the first three years after the publication date of the rule.

TABLE 13—BURDEN FOR FIRST THREE YEARS [After the publication of the rule]\*

Section	Respondents hours	Year 1		Year 2		Year 3		Total	
		Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
\$ 111.15 Annual Registration burden ...	69,761	14,305	\$1,045,051	5,803	\$268,563	5,803	\$268,563	25,911	\$1,582,177
\$ 111.205(a) Reporting Present and Future Records:									
<i>Electronic Reporting:</i>									
Initial costs .....	326			15,773	1,629,775			15,773	1,629,775
Annual costs .....	326			6,520	489,000	6,520	489,000	13,040	978,000
<i>Manual Data Entry:</i>									
Annual costs .....	4,707			3,775	328,789	3,798	330,787	7,573	659,776
\$ 111.255 Historical Record Reporting:									
<i>Electronic Reporting</i> .....	318			23,356	5,551,200			23,356	5,551,200
<i>Manual Data Entry</i> .....	1,968			770,712	40,406,046	770,712	40,406,046	1,541,424	80,812,092

TABLE 13—BURDEN FOR FIRST THREE YEARS—Continued  
[After the publication of the rule] \*

Section	Respondents hours	Year 1		Year 2		Year 3		Total	
		Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
§ 111.310 Written consent (Employment History) .....	17,586	.....	.....	5,862	27,129	5,862	27,129	11,724	54,259
§ 111.255 Deviation request .....	2,129	.....	.....	43	3,706	43	3,706	85	7,412
Total .....	97,121	14,305	1,045,051	831,843	48,704,408	792,738	41,525,231	1,638,886	91,274,691

\* Estimates may not total due to rounding.

4. Effects of Reduced Burden From the Discontinuation of the Pilot Records Improvement Act

The PRIA will be discontinued three years and 90 days after the effective date

of the proposed Pilot Records Database. Once PRIA is discontinued there will be cost savings, which are captured in the analysis associated with this final rule. The following table provides a three

year analysis of net burden and cost savings for the amended collection of information once PRIA is discontinued.

TABLE 14—REDUCED BURDEN FROM DISCONTINUATION OF PILOT RECORDS IMPROVEMENT ACT \*

Section	Respondents	Year 4		Year 5		Year 6		Total	
		Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
§ 111.15 Annual Registration burden	52,758	5,803	\$268,563	5,803	\$268,563	5,803	\$268,563	17,409	\$805,689
§ 111.205 Reporting Present and Future Records:									
Electronic Data Transfer .....	326	6,520	489,000	6,520	489,000	6,520	489,000	19,560	1,467,000
Manual Data Entry .....	4,707	3,881	337,996	3,894	339,100	3,904	340,097	11,679	1,017,193
§ 111.310 Written Consent (Employment History) .....	17,586	586	27,129	586	27,129	586	27,129	1,759	81,388
Total Cost .....	.....	16,790	1,122,688	16,803	1,123,792	16,813	1,124,789	50,407	3,371,270
§ 111.5 Discontinuation of PRIA—Total Savings .....	101,999	31,831	4,813,969	31,831	4,813,969	31,831	4,813,969	95,493	14,441,908
Net Total Savings .....	.....	(15,041)	(3,691,281)	(15,028)	(3,690,177)	(15,018)	(3,689,180)	(45,087)	(11,070,638)

\* Estimates may not total due to rounding.

Individuals and organizations may send comments on the information collection requirement to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street NW, Washington, DC 20053 by July 12, 2021.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances.

The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f and involves no extraordinary circumstances.

H. Privacy Analysis

The FAA conducted a privacy impact assessment (PIA) in accordance with section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889. The FAA examined the effect the final rule may have on collecting, storing, and disseminating personally identifiable information (PII) for use by operators subject to this final rule in making hiring decisions. A copy of the PIA will be included in the docket for this rulemaking and will be available at <http://www.transportation.gov/privacy>.

VII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The Agency determined that this action will 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, does not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final 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 is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined this

action would have no effect on international regulatory cooperation.

VIII. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the internet—

- 1. Search the Federal eRulemaking Portal (http://www.regulations.gov);
2. Visit the FAA's Regulations and Policies web page at http://www.faa.gov/regulations\_policies/ or
3. Access the Government Printing Office's web page at http://www.gpo.gov/fdsys/.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677.

B. Comments Submitted to the Docket

Comments received may be viewed by going to http://www.regulations.gov and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA, visit http://www.faa.gov/regulations\_policies/rulemaking/sbre\_act/.

List of Subjects

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

14 CFR Part 91

Air taxis, Aircraft, Airmen, Aviation safety, Charter flights, Public aircraft, Reporting and recordkeeping requirements.

14 CFR Part 111

Administrative practice and procedure, Air carriers, Air taxis, Aircraft, Airmen, Air operators, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Public aircraft, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701-44702, 44711, 46102, and 51 U.S.C. 50901-50923.

2. Effective August 9, 2021, amend § 11.201 in the table in paragraph (b) by revising the entry for "Part 111" to read as follows:

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

Table with 2 columns: 14 CFR part or section identified and described, Current OMB control No. Row 1: Part 111, 2120-0607

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

§ 91.1051 [Removed]

4. Effective September 9, 2024, § 91.1051 is removed.

5. Effective September 8, 2021, add part 111 to subchapter G to read as follows:

PART 111—PILOT RECORDS DATABASE

Subpart A—General

Sec.

- 111.1 Applicability.
111.5 Compliance date.
111.10 Definitions.
111.15 Application for database access.
111.20 Database access.
111.25 Denial of access.
111.30 Prohibited access and use.
111.35 Fraud and falsification.
111.40 Record Retention.

Subpart B—Access to and Evaluation of Records

- 111.100 Applicability.
111.105 Evaluation of pilot records.
111.110 Motor vehicle driving record request.
111.115 Good faith exception.
111.120 Pilot consent and right of review.
111.135 FAA records.

Subpart C—Reporting of Records

- 111.200 Applicability.
111.205 Reporting requirements.
111.210 Format for reporting information.
111.215 Method of reporting.
111.220 Drug and alcohol testing records.
111.225 Training, qualification, and proficiency records.
111.230 Final disciplinary action records.
111.235 Final separation from employment records.
111.240 Verification of motor vehicle driving record search and evaluation.
111.245 Special rules for protected records.
111.250 Correction of reported information and dispute resolution.
111.255 Reporting historical records to PRD.

Subpart D—Pilot Access and Responsibilities

- 111.300 Applicability.
111.305 Application for database access.
111.310 Written consent.
111.315 Pilot right of review.
111.320 Reporting errors and requesting corrections.

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40113, 44701, 44703, 44711, 46105, 46301.

Subpart A—General

§ 111.1 Applicability.

(a) This part prescribes the rules governing the use of the Pilot Records Database (PRD).

(b) Except as provided in subsection (c) of this section, this part applies to:

(1) Each operator that holds an air carrier or operating certificate issued in accordance with part 119 of this chapter and is authorized to conduct operations under part 121, 125, or 135 of this chapter.

(2) Each operator that holds management specifications for a fractional ownership program issued in accordance with subpart K of part 91 of this chapter.

(3) Each operator that holds a letter of authorization issued in accordance with § 91.147 of this chapter.

(4) Each operator that operates two or more aircraft described in paragraph

(b)(4)(i) or (ii) of this section, in furtherance of or incidental to a business, solely pursuant to the general operating and flight rules in part 91 of this chapter, or that operates aircraft pursuant to a Letter of Deviation Authority issued under § 125.3 of this chapter.

(i) Standard airworthiness airplanes that require a type rating under § 61.31(a) of this chapter.

(ii) Turbine-powered rotorcraft.

(5) Each entity that conducts public aircraft operations as defined in 49 U.S.C. 40102(a)(41) on a flight that meets the qualification criteria for public aircraft status in 49 U.S.C. 40125, unless the entity is any branch of the United States Armed Forces, National Guard, or reserve component of the Armed Forces.

(6) Each trustee in bankruptcy of any operator or entity described in this paragraph, subject to the following criteria:

(i) If any operator subject to the requirements of this subpart files a petition for protection under the Federal bankruptcy laws, the trustee appointed by the bankruptcy court must comply with the requirements of subparts A and C of this part.

(ii) The operator may delegate its authority to the trustee appointed by the bankruptcy court to access the PRD on its behalf in accordance with § 111.20 or the trustee may submit an application to the FAA requesting access to the PRD consistent with the requirements of § 111.15.

(7) Each person that submits or is identified on the application described in § 111.15 and is approved by the Administrator to access the PRD.

(8) Each person who is employed as a pilot by, or is seeking employment as a pilot with, an operator subject to the applicability of this part.

(c) This part does not apply to foreign air carriers or operators subject to part 375 of this title.

#### § 111.5 Compliance date.

(a) Compliance with this part is required by September 9, 2024, except as provided in §§ 111.15, 111.100, 111.200, and 111.255.

(b) Beginning on September 9, 2024, the Pilot Records Improvement Act (PRIA) ceases to be effective and will not be an available alternative to PRD for operators, entities, or trustees to which this subpart applies.

#### § 111.10 Definitions.

For purposes of this part, the term—  
*Authorized user* means an individual who is employed by an operator, entity, or trustee and who is designated by a

responsible person to access the PRD on behalf of the employer for purposes of reporting and evaluating records that pertain to an individual pilot applicant.

*Begin service as a pilot* means the earliest date on which a pilot serves as a pilot flight crewmember or is assigned duties as a pilot in flight for an operator or entity that is subject to the applicability of this part.

*Final disciplinary action record* means a last-in-time record of corrective or punitive action taken by an operator or entity who is subject to the applicability of this part in response to an event pertaining to pilot performance. No disciplinary action is considered final until the operator determines the action is not subject to any pending dispute.

*Final separation from employment record* means a last-in-time record of any action ending the employment relationship between a pilot and an operator or entity who is subject to the applicability of this part. No separation from employment is considered final until the operator determines the separation is not subject to any pending dispute.

*Historical record* means a record that an operator subject to the applicability of Subpart C of this part must generate and maintain in accordance with 49 U.S.C. 44703(h)(4) and must report to the PRD in accordance with 49 U.S.C. 44703(i)(15)(C)(iii).

*PRD Date of Hire* means:

(1) The earliest date on which an individual:

(i) Begins any form of required training in preparation for the individual's service as a pilot on behalf of an operator or entity subject to the applicability of this part; or

(ii) Performs any duty as a pilot for an operator or entity subject to the applicability of this part.

(2) This definition includes both direct employment and employment that occurs on a contract basis for any form of compensation.

*Proxy* means a person who is designated by a responsible person to access the PRD on behalf of an operator, entity, or trustee subject to the applicability of this part for purposes of reporting or retrieving records.

*Record pertaining to pilot performance* means a record of an activity or event directly related to a pilot's responsibilities or completion of the core duties in conducting safe aircraft operations, as assigned by the operator employing the pilot.

*Reporting entity* means an operator, entity, or trustee that is subject to the applicability of subpart C of part 111,

including its responsible person, authorized users, and proxies.

*Responsible person* means the individual identified on the application required by § 111.15 and who meets at least one of the criteria in § 111.15(e).

*Reviewing entity* means operator that is subject to the applicability of subpart B of part 111, including its responsible person, authorized users, and proxies.

#### § 111.15 Application for database access.

(a) Each operator, entity, or trustee to which this part applies must submit an application for access to the PRD in the form and manner prescribed by the Administrator by September 8, 2021.

(b)(1) Each operator or entity to which this part applies that plans to initiate operations after September 8, 2021, must submit the application required by this section to the FAA at least 30 days before the operator or entity initiates aircraft operations.

(2) Within 30 days of appointment by a bankruptcy court as described in § 111.1(b)(6)(i), a trustee must submit the application required by this section or receive delegation of access from the applicable operator or entity.

(c) The application required by this section must contain the following information:

(1) The full name, job title, telephone number, and electronic mail address of the responsible person who is authorized to submit the application in accordance with paragraph (d) of this section;

(2) The name of the operator, entity, or trustee;

(3) The FAA air carrier or operating certificate number, as applicable; and

(4) Any other item the Administrator determines is necessary to verify the identity of all individuals designated by an operator, entity, or trustee to access the PRD.

(d) The application required by this section must be submitted by a responsible person who holds at least one of the following positions, unless otherwise approved by the Administrator:

(1) For each operator that holds an air carrier or operating certificate issued in accordance with part 119 for operations under part 121, a person serving in a management position required by § 119.65(a) of this chapter.

(2) For each operator that holds an operating certificate issued in accordance with part 119 for operations under part 125, a person serving in a management position required by § 125.25(a) of this chapter.

(3) For each operator that holds an operating certificate issued in accordance with part 119 for operations

under part 135 using more than one pilot in its operations, a person serving in a management position required by § 119.69(a) of this chapter.

(4) For each operator that holds an operating certificate issued in accordance with part 119 for operations under part 135 authorized to use only one pilot in its operations, the pilot named in that certificate holder's operation specifications.

(5) For each operator that holds a letter of authorization issued in accordance with § 91.147 of this chapter, an individual designated as the responsible person on the operator's letter of authorization.

(6) For each operator that holds management specifications for a fractional ownership program issued in accordance with subpart K of part 91 of this chapter, an authorized individual designated by the fractional ownership program manager, as defined in § 91.1001(b) of this chapter, who is employed by the fractional ownership program and whose identity the Administrator has verified.

(7) For any other operator or entity subject to the applicability of this part, or any trustee appointed in a bankruptcy proceeding, an individual authorized to sign and submit the application required by this section who is employed by the operator and whose identity the Administrator has verified.

(e) Each operator, entity, or trustee must submit to the FAA—

(1) An amended application for database access no later than 30 days after any change to the information included on the initial application for database access occurs, except when the change pertains to the identification or designation of the responsible person.

(2) An amended application identifying another responsible person eligible for database access in accordance with this section, immediately when the operator, entity, or trustee is aware of information that would cause the current responsible person's database access to be cancelled or denied.

(f) Upon approval by the FAA of a request for access to the PRD, each person identified in paragraph (e) is authorized to:

(1) Access the database for purposes consistent with the provisions of this part, on behalf of the operator, entity, or trustee for which the person is authorized, for purposes consistent with the provisions of this part; and

(2) Delegate PRD access to authorized users and proxies in accordance with § 111.20.

#### § 111.20 Database access.

(a) *Delegation.* The responsible person may delegate PRD access to authorized users or proxies for purposes of compliance by the operator, entity, or trustee with the requirements of subpart B or C of this part.

(b) *Terms for access.* No person may use the PRD for any purpose other than to inform a hiring decision concerning a pilot or to report information on behalf of the operator, entity, or trustee.

(c) *Continuing access for authorized users and proxies.* PRD access by authorized users and proxies is contingent on the continued validity of the responsible person's electronic access. If a responsible person's electronic access is cancelled, the database access of authorized users and proxies will be cancelled unless the operator, entity, or trustee submits an amended application for database access and receives FAA approval of that application in accordance with § 111.15.

#### § 111.25 Denial of access.

(a) The Administrator may deny PRD access to any person for failure to comply with any of the duties or responsibilities prescribed by this part or as necessary to preserve the security and integrity of the database, which includes but is not limited to—

(1) Making a fraudulent or intentionally false report of information to the database; or

(2) Misusing or misappropriating user rights or protected information in the database.

(b) The Administrator may deny any operator or entity access to the PRD if the Administrator revokes or suspends the operating certificate or other authorization to operate.

(c) Any person whose access to the database has been denied by the Administrator may submit a request for reconsideration of the denial in a form and manner the Administrator provides. Database access will not be permitted pending reconsideration.

#### § 111.30 Prohibited access and use.

(a) No person may access the database for any purpose other than the purposes provided by this part.

(b) No person may share, distribute, publish, or otherwise release any record accessed in the database to any person or individual not directly involved in the hiring decision, unless specifically authorized by law or unless the person sharing or consenting to share the record is the subject of the record.

(c) Each person that accesses the PRD to retrieve a pilot's records must protect the confidentiality of those records and

the privacy of the pilot as to those records.

#### § 111.35 Fraud and falsification.

No person may make, or cause to be made, a fraudulent or intentionally false statement, or conceal or cause to be concealed a material fact, in—

(a) Any application or any amendment to an application submitted in accordance with the requirements of this part;

(b) Any other record reported to the PRD in accordance with the requirements of this part; or

(c) Any record or report that is kept, made, or used to show compliance with this part.

#### § 111.40 Record retention.

(a) The Administrator will maintain a pilot's records in the PRD for the life of the pilot. Any person requesting removal of the records pertaining to an individual pilot must notify the FAA of the pilot's death in a form and manner acceptable to the Administrator.

(b) The notification must include the following:

(1) The full name of the pilot as it appears on his or her pilot certificate;

(2) The pilot's FAA-issued certificate number; and

(3) A certified copy of the individual's certificate of death.

#### Subpart B—Access to and Evaluation of Records

##### § 111.100 Applicability.

(a) This subpart prescribes requirements for the following reviewing entities:

(1) Each operator that holds an air carrier or operating certificate issued by the Administrator in accordance with part 119 of this chapter and is authorized to conduct operations under part 121, part 125, or part 135 of this chapter.

(2) Each operator that holds management specifications to operate in accordance with subpart K of part 91 of this chapter.

(3) Each operator that holds a letter of authorization to conduct air tour operations in accordance with § 91.147 of this chapter.

(b) Compliance with this subpart is required beginning June 10, 2022, except compliance with § 111.105(b)(1) is required beginning December 7, 2021.

(c) If an operator described in § 111.1(b)(4) or an entity described in § 111.1(b)(5) accesses the PRD to review records in accordance with this subpart, the operator or entity must comply with § 111.120.



**§ 111.105 Evaluation of pilot records.**

(a) Except as provided in § 111.115, no reviewing entity may permit an individual to begin service as a pilot until the reviewing entity has evaluated all relevant information in the PRD.

(b) Evaluation must include review of all of the following information pertaining to that pilot:

(1) All FAA records in the PRD as described in § 111.135.

(2) All records in the PRD submitted by a reporting entity.

(3) All motor vehicle driving records obtained in accordance with § 111.110.

(4) The employment history the pilot provides to the PRD in accordance with subpart D of this part. If, upon review of the employment history provided by the pilot and the records described in (b)(2) of this section, a reviewing entity determines that records might be available that the pilot's previous employer has not yet uploaded in the database, the reviewing entity must submit a request to the pilot's previous employer(s) through the PRD to report any applicable records in accordance with the process in § 111.215(b).

**§ 111.110 Motor vehicle driving record request.**

(a) Except as provided in paragraph (d) of this section, no reviewing entity may permit an individual to begin service as a pilot unless the reviewing entity has requested and evaluated all relevant information identified through a National Driver Register (NDR) search set forth in chapter 303 of Title 49 concerning the individual's motor vehicle driving history in accordance with the following:

(1) The reviewing entity must obtain the written consent of that individual, in accordance with § 111.310, before requesting an NDR search for the individual's State motor vehicle driving records;

(2) After obtaining the written consent of the individual, the reviewing entity must submit a request to the NDR to determine whether any State maintains relevant records pertaining to that individual; and

(3) When the NDR search result is returned, if the NDR search result indicates that records exist concerning that individual, the reviewing entity must submit a request for the relevant motor vehicle driving records to each chief driver licensing official of each State identified in the NDR search result.

(b) Each reviewing entity must document in the PRD that the reviewing entity complied with this section, as prescribed at § 111.240.

(c) Upon the Administrator's request, each reviewing entity must provide documentation showing the reviewing entity has conducted the search required by paragraph (a). The reviewing entity must retain this documentation for five years.

(d) This section does not apply to operators described in § 111.100(a)(2) through (3).

**§ 111.115 Good faith exception.**

Reviewing entities may allow an individual to begin service as a pilot without first evaluating records in accordance with § 111.105 only if the reviewing entity—

(a) Made a documented, good faith attempt to access all necessary information maintained in the PRD that the reviewing entity is required to evaluate; and

(b) Received notice from the Administrator that information is missing from the PRD pertaining to the individual's employment history as a pilot.

**§ 111.120 Pilot consent and right of review.**

(a) No reviewing entity may retrieve records in the PRD pertaining to any pilot prior to receiving that pilot's written consent authorizing the release of that pilot's information maintained in the PRD.

(b) The consent required in paragraph (a) of this section must be documented by that pilot in accordance with § 111.310.

(c) Any pilot who submits written consent to a reviewing entity in accordance with § 111.310(c) may request a copy of any State motor vehicle driving records the reviewing entity obtained regarding that pilot in accordance with § 111.110. The reviewing entity must provide to the pilot all copies of State motor vehicle driving records obtained within 30 days of receiving the request from that pilot.

**§ 111.135 FAA records.**

No reviewing entity may permit an individual to begin service as a pilot unless a responsible person or authorized user has accessed and evaluated all relevant FAA records for that individual in the PRD, including:

(a) Records related to current pilot and medical certificate information, including associated type ratings and information on any limitations to those certificates and ratings.

(b) Records maintained by the Administrator concerning any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under part 61 of this chapter.

(c) Records related to enforcement actions resulting in a finding by the Administrator, which was not subsequently overturned, of a violation of title 49 of the United States Code or a regulation prescribed or order issued under that title.

(d) Records related to an individual acting as pilot in command or second in command during an aviation accident or incident.

(e) Records related to an individual's pre-employment drug and alcohol testing history and other U.S. Department of Transportation drug and alcohol testing including:

(1) Verified positive drug test results;

(2) Alcohol misuse violations, including confirmed alcohol results of 0.04 or greater; and

(3) Refusals to submit to drug or alcohol testing.

**Subpart C—Reporting of Records by Air Carriers and Operators****§ 111.200 Applicability.**

(a) This subpart prescribes the requirements for reporting records to the PRD about individuals employed as pilots and applies to the following reporting entities:

(1) Each operator that holds an air carrier or operating certificate issued in accordance with part 119 of this chapter and is authorized to conduct operations under part 121, 125, or 135 of this chapter.

(2) Each operator that holds management specifications to operate in accordance with subpart K of part 91 of this chapter.

(3) Each operator that holds a letter of authorization to conduct air tour operations in accordance with § 91.147 of this chapter.

(4) Each operator described in § 111.1(b)(4).

(5) Each entity that conducts public aircraft operations as described in § 111.1(b)(5).

(6) The trustee in bankruptcy of any operator described in this section.

(b) Compliance dates for this subpart are as follows:

(1) For a reporting entity already conducting operations on June 10, 2022, compliance with this subpart is required beginning June 10, 2022.

(2) For a reporting entity that initiates operations after June 10, 2022, compliance with this subpart is required within 30 days of the reporting entity commencing aircraft operations.

(3) Specific compliance dates for historical records are set forth in § 111.255.

**§ 111.205 Reporting requirements.**

(a) Each reporting entity must provide the information required in paragraph (b) of this section for any individual employed as a pilot beginning on the PRD date of hire for that individual.

(b) Each reporting entity must report the following records to the PRD for each individual employed as a pilot:

- (1) All records described in §§ 111.220 through 111.240 generated on or after June 10, 2022;
- (2) All historical records required by § 111.255 of this part, as applicable; and
- (3) The PRD date of hire.

(c) No person may enter or cause to be entered into the PRD any information described in § 111.245.

**§ 111.210 Format for reporting information.**

Each reporting entity must report to the PRD all records required by this subpart for each individual the reporting entity employed as a pilot in a form and manner prescribed by the Administrator.

**§ 111.215 Method of reporting.**

(a) Except as provided in paragraph (b) of this section of this part, all records created on or after June 10, 2022, and required to be reported to the PRD under this subpart must be reported within 30 days of the effective date of the record, or within 30 days of the record becoming final when the record is a disciplinary action record or a separation from employment record.

(b) Each operator conducting an operation described in § 111.1(b)(4), entity conducting a public aircraft operation, operator conducting an air tour operation under § 91.147, or a trustee for such an operator or entity must either comply with paragraph (a) of this section or report and retain pilot records in accordance with all requirements of this paragraph.

(1) Operators, entities, or trustees listed in this paragraph (b) must report a record described in § 111.225, § 111.230, or § 111.235 to the PRD upon receipt of a request from a reviewing entity within 14 days, unless the record memorializes one or more of the following:

(i) A disciplinary action that resulted in permanent or temporary removal of the pilot from aircraft operations as described in § 111.230, which must be reported in accordance with paragraph (a) of this section.

(ii) A separation from employment action resulting from a termination as described in § 111.235, which must be reported in accordance with paragraph (a) of this section.

(2) If no records are available at time of request from a reviewing entity, the

operator, entity, or trustee must provide written confirmation within 14 of the days of the request to the PRD that no records are available.

(3) An operator, entity, or trustee must retain a record eligible to be reported upon request under paragraph (b)(1) of this section for five years from the date of creation, unless the operator or entity already reported that record to the PRD.

(c) For records created before June 10, 2022, and maintained in accordance with PRIA, an operator, entity, or trustee listed in paragraph (b) of this section must continue to maintain all records that would have been provided in response to a PRIA request for five years from the date of creation of the record, and must report that record upon request from a reviewing entity in accordance with paragraph (b).

**§ 111.220 Drug and alcohol testing records.**

(a) Each operator or trustee required to comply with part 120 of this chapter and subject to the applicability of this subpart must report to the PRD the following records for each individual whom the reporting entity has employed as a pilot:

(1) Records concerning drug testing, including—

(i) Any drug test result verified positive by a Medical Review Officer, that the Medical Review Officer and employer must retain in accordance with § 120.111(a)(1) of this chapter and 49 CFR 40.333(a)(1)(ii);

(ii) Any refusal to submit to drug testing or records indicating substituted or adulterated drug test results, which the employer must retain in accordance with 49 CFR 40.333(a)(1)(iii);

(iii) All return-to-duty drug test results verified by a Medical Review Officer, that the employer must retain in accordance with 49 CFR 40.333(a)(1)(ii) or (iii) or (a)(4);

(iv) All follow-up drug test results verified by a Medical Review Officer, which the employer must retain in accordance with 49 CFR 40.333(a)(1)(v).

(2) Records concerning alcohol misuse, including—

(i) A test result with a confirmed breath alcohol concentration of 0.04 or greater, which the employer must retain in accordance with § 120.219(a)(2)(i)(B) of this chapter;

(ii) Any record pertaining to an occurrence of on-duty alcohol use, pre-duty alcohol use, or alcohol use following an accident, which the employer must retain in accordance with § 120.219(a)(2)(i)(D) of this chapter;

(iii) Any refusal to submit to alcohol testing, that the employer must retain in accordance with § 120.219(a)(2)(i)(B) of

this chapter and 49 CFR 40.333(a)(1)(iii);

(iv) All return-to-duty alcohol test results, that the employer must retain in accordance with 49 CFR 40.333(a)(1)(i) or (iii) or (a)(4);

(v) All follow-up alcohol test results, which the employer must retain in accordance with 49 CFR 40.333(a)(1)(v).

(b) Each record reported to the PRD in accordance with paragraph (a) of this section must include the following:

(1) In the case of a drug or alcohol test result:

- (i) The type of test administered;
- (ii) The date the test was administered; and
- (iii) The result of the test.

(2) In the case of alcohol misuse, as described in paragraph (a)(2)(ii) of this section:

- (i) The type of each alcohol misuse violation;
- (ii) The date of each alcohol misuse violation.

(c) In addition to the requirements of §§ 120.113(d)(3) and 120.221(c), operators required to report in accordance with this section must report records within 30 days of the following occurrences, as applicable:

(1) The date of verification of the drug test result;

(2) The date of the alcohol test result;

(3) The date of the refusal to submit to testing; or

(4) The date of the alcohol misuse occurrence.

**§ 111.225 Training, qualification, and proficiency records.**

(a) Except as provided in paragraph (b) of this section, each reporting entity must provide to the PRD the following records for each individual whom the reporting entity has employed as a pilot:

(1) Records establishing an individual's compliance with FAA-required training, qualifications, and proficiency events, which the reporting entity maintains pursuant to § 91.1027(a)(3), § 121.683, § 125.401 or § 135.63(a)(4) of this chapter, as applicable, including comments and evaluations made by a check pilot or evaluator; and

(2) Other records the reporting entity maintains documenting an individual's compliance with FAA or employer-required training, checking, testing, proficiency, or other events related to pilot performance concerning the training, qualifications, proficiency, and professional competence of the individual, including any comments and evaluations made by a check pilot or evaluator.

(b) No person may report any of the following information for inclusion in the PRD:

(1) Records related to flight time, duty time, and rest time.

(2) Records demonstrating compliance with physical examination requirements or any other protected medical records.

(3) Records documenting recent flight experience.

(4) Records identified in § 111.245.

(c) Each record reported to the PRD in accordance with paragraph (a) of this section must include:

(1) Date of the event;

(2) Aircraft type, if applicable;

(3) Duty position of the pilot, if applicable;

(4) Training program approval part and subpart of this chapter, as applicable;

(5) Crewmember training and qualification curriculum and category of training as reflected in either a FAA-approved or employer-mandated training program;

(6) Result of the event (satisfactory or unsatisfactory);

(7) Comments of check pilot or evaluator, if applicable under part 91, 121, 125, or 135 of this chapter. For unsatisfactory events, the tasks or maneuvers considered unsatisfactory must be included.

(d) An operator, entity, or trustee that complies with § 111.215(b) must report records in accordance with paragraphs (a) through (c) of this section upon request, if that operator or entity possesses those records.

(e)(1) Each reporting entity must provide a record within 30 days of creating that record, in accordance with § 111.215(a), unless the reporting entity is an operator, entity, or trustee complying with § 111.215(b).

(2) An operator, entity, or trustee complying with § 111.215(b) must provide records described in this section or a statement that it does not have any records described in this section within 14 days of receiving a request from a reviewing entity.

#### **§ 111.230 Final disciplinary action records.**

(a) Except as provided in paragraph (b) of this section, each reporting entity must provide to the PRD any final disciplinary action record pertaining to pilot performance with respect to an individual whom the reporting entity has employed as a pilot.

(b) No person may report to the PRD any record of disciplinary action that was subsequently overturned because the event prompting the action did not occur or the pilot was not at fault as determined by—

(1) A documented agreement between the employer and the pilot; or

(2) The official and final decision or order of any panel or person with

authority to review employment disputes, or by any court of law.

(c) If a reporting entity receives notice that any disciplinary action record reported to the PRD under paragraph (a) of this section was overturned in accordance with paragraph (b), that entity must correct the pilot's PRD record in accordance with § 111.250 within 10 days.

(d) Each final disciplinary action record that must be reported to the PRD under paragraph (a) of this section must include the following information:

(1) The type of disciplinary action taken by the employer, including written warning, suspension, or termination;

(2) Whether the disciplinary action resulted in permanent or temporary removal of the pilot from aircraft operations;

(3) The date the disciplinary action occurred; and

(4) Whether there are additional documents available that are relevant to the record.

(e) An operator, entity, or trustee complying with § 111.215(b) must report records described in paragraphs (a) through (d) of this section upon request, unless the disciplinary action resulted in permanent or temporary removal of the pilot from aircraft operations. If the disciplinary action resulted in permanent or temporary removal of the pilot from aircraft operations, the operator, entity, or trustee must report the record in accordance with § 111.215(a).

(f)(1) A reporting entity must provide records of final disciplinary actions no later than 30 days after the action is final, unless the reporting entity is an operator, entity or trustee complying with § 111.215(b).

(2) An operator, entity or trustee complying with § 111.215(b) must report records described in this section, or state that it does not have any applicable records, within 14 days of receiving a request from a reviewing entity.

(g) Each reporting entity must:

(1) Retain documents relevant to the record reported under paragraph (a) of this section for five years, if available; and

(2) Provide such documents upon request within 14 days to:

(i) A reviewing entity; or

(ii) The pilot that is the subject of the record.

#### **§ 111.235 Final separation from employment records.**

(a) Except as provided in paragraph (b) of this section, each reporting entity must provide to the PRD the following

records for each individual whom the reporting entity has employed as a pilot:

(1) Records concerning separation from employment kept pursuant to § 91.1027(a)(3), § 121.683, § 125.401 or § 135.63(a)(4) of this chapter; and

(2) Records pertaining to pilot performance kept concerning separation from employment for each pilot that it employs.

(b) No person may report to the PRD any record regarding separation from employment that was subsequently overturned because the event prompting the action did not occur or the pilot was not at fault as determined by—

(1) A documented agreement between the employer and the pilot; or

(2) The official and final decision or order of any panel or individual given authority to review employment disputes, or by any court of law.

(c) If a reporting entity receives notice that any separation from employment record reported to the PRD under paragraph (a) of this section was overturned in accordance with paragraph (b) of this section, that entity must correct the pilot's PRD record in accordance with § 111.250 within 10 days.

(d) Each separation from employment action record that must be reported to the PRD in accordance with paragraph (a) of this section must include a statement of the purpose for the separation from employment action, including:

(1) Whether the separation resulted from a termination as a result of pilot performance, including professional disqualification;

(2) Whether the separation is based on another reason, including but not limited to physical (medical) disqualification, employer-initiated separation not related to pilot performance, or any resignation, including retirement;

(3) The date of separation from employment; and

(4) Whether there are additional documents available that are relevant to the record.

(e) An operator, entity, or trustee complying with § 111.215(b) must report the records described in paragraphs (a) through (d) of this section upon request, unless the separation from employment action resulted from a termination. If the separation from employment record resulted from a termination, the operator, entity, or trustee must report the record in accordance with § 111.215(a).

(f)(1) A reporting entity must provide any records of separation from employment actions no later than 30 days after the date of separation from

employment is final, unless the reporting entity is an operator, entity, or trustee complying with § 111.215(b).

(2) An operator, entity, or trustee complying with § 111.215(b) must report records described in this section or state that it does not have any applicable records within 14 days of receiving a request from a reviewing entity.

(g) Each reporting entity must:

(1) Retain documents relevant to the record reported under paragraph (a) of this section for five years, if available; and

(2) Provide such documents upon request within 14 days to:

(i) A reviewing entity; or  
(ii) The pilot that is the subject of the record.

**§ 111.240 Verification of motor vehicle driving record search and evaluation.**

(a) Each operator subject to the requirements of § 111.110 of this part must document in the PRD within 45 days of the pilot's PRD date of hire that the operator met the requirements of § 111.110.

(b) No operator may report any substantive information from State motor vehicle driving records pertaining to any individual obtained in accordance with § 111.110 for inclusion in the PRD.

**§ 111.245 Special rules for protected records.**

No person may report any pilot record for inclusion in the PRD that was reported by any individual as part of any approved Voluntary Safety Reporting Program for which the FAA has designated reported information as protected in accordance with part 193 of this chapter.

**§ 111.250 Correction of reported information and dispute resolution.**

(a) A reporting entity that discovers or is informed of a perceived error or inaccuracy in information previously reported to the PRD must correct that record in the PRD within 10 days of identification, or initiate dispute resolution in accordance with paragraph (b) of this section.

(b) Each reporting entity must—

(1) Initiate investigation of any dispute within 30 days of determining that it does not agree that the record identified is inaccurate.

(2) Provide final disposition within a reasonable amount of time to any request for dispute resolution made by an individual about PRD records.

(3) Document in the PRD the final disposition of any dispute made by a pilot in accordance with this paragraph (b) and § 111.320.

**§ 111.255 Reporting historical records to PRD.**

(a) Each operator that holds an air carrier certificate issued in accordance with part 119 of this chapter and is authorized to conduct operations under part 121 or part 135 of this chapter must report to the PRD all historical records kept in accordance with PRIA dating from August 1, 2005 until June 10, 2022, in a form and manner prescribed by the Administrator.

(b) Each operator that holds an operating certificate issued in accordance with part 119 of this chapter and is authorized to conduct operations under part 121, 125, or 135 of this chapter or that holds management specifications to operate in accordance with subpart K of part 91 of this chapter must report to the PRD all historical records kept in accordance with PRIA dating from August 1, 2010, until June 10, 2022, in a form and manner prescribed by the Administrator.

(c) If an operator required to report historical records to the PRD in accordance with this section is appointed a trustee in a bankruptcy proceeding, the trustee must report the operator's historical records.

(d) Compliance for reporting historical records that date on or after January 1, 2015, is required by June 12, 2023. Compliance for records that date before January 1, 2015, is required by September 9, 2024.

(e) An operator or trustee subject to the applicability of this subpart must maintain all historical records reported to the PRD in accordance with paragraphs (a) and (b) of this section for at least five years after reporting those records.

(f) An operator or trustee is not required to report historical records for any individual who is 99 years of age or older on June 10, 2022.

(g)(1) The Administrator may authorize a request for deviation from paragraph (d) of this section based on a determination that a delay in compliance, due to circumstance beyond control of the operator or trustee reporting historical records, would not adversely affect safety.

(2) A request for deviation from paragraph (d) of this section must include the following information:

- (i) The name of the operator or trustee;
- (ii) The name of the responsible person;
- (iii) The name of the pilot(s) who are the subject of the record;
- (iv) Historical record type for which deviation is requested;
- (v) Date range of records; and

(vi) Justification for the request for deviation, including a description of the circumstance referenced in (g)(1).

(3) Operators and trustees granted deviation in accordance with this paragraph must continue to retain historical records and respond to requests for such records for the term of that deviation in a form and manner prescribed by the Administrator.

(4) The Administrator may, at any time, terminate a grant of deviation issued under this paragraph.

**Subpart D—Pilot Access and Responsibilities**

**§ 111.300 Applicability.**

This subpart applies to each individual who is employed as a pilot by, or is seeking employment as a pilot with, an operator or entity subject to the applicability of this part, as set forth in § 111.1.

**§ 111.305 Application for database access.**

(a) A pilot must request electronic access to the PRD by submitting an application in a form and manner acceptable to the Administrator. Except as provided in § 111.315(c), electronic access to the PRD is required when—

(1) The pilot seeks to review and obtain a copy of that pilot's own comprehensive PRD record;

(2) The pilot gives consent to a particular operator to access that pilot's comprehensive PRD record; or

(3) The pilot exercises any other privileges provided by this part.

(b) The application required in paragraph (a) of this section must include, at a minimum, the following information:

(1) The pilot's full name as it appears on his or her pilot certificate.

(2) The pilot's FAA-issued certificate number.

(3) A current mailing address and telephone number.

(4) An electronic mail address.

(5) Any additional information that the Administrator might request to verify the identity of the pilot requesting access to the PRD.

(c) The application required in paragraph (a) of this section must be submitted at least 7 days before the pilot seeks to access the PRD.

**§ 111.310 Written consent.**

(a) Before any operator may access a pilot's records in the PRD, that pilot must apply for access to the PRD in accordance with § 111.305 and provide written consent to the FAA for release of that pilot's records to the operator, in a form and manner acceptable to the Administrator.

(b) Provision of consent must include an affirmation that the employment history of the pilot for five years preceding the date of consent is accurate and complete. If the pilot finds the employment history is not complete, the pilot must update the employment history to list all past employers.

(c) Before an operator submits a request to the NDR for an individual's motor vehicle driving record for purposes of compliance with § 111.110, the individual must provide written consent specific to the NDR search.

#### § 111.315 Pilot right of review.

(a) Once a pilot has received electronic access in accordance with § 111.305, the pilot may access the PRD to review all records pertaining to that pilot.

(b) A pilot who submits written consent to a reviewing entity in accordance with § 111.310(c) may request a copy of any State motor vehicle driving records obtained by the reviewing entity in accordance with § 111.110.

(c) A pilot may review all records contained in the PRD pertaining to that pilot, without accessing the PRD and without obtaining electronic access issued in accordance with § 111.305, upon submission of a form provided by the Administrator to confirm the pilot's identity.

#### § 111.320 Reporting errors and requesting corrections.

A pilot who identifies an error or inaccuracy in that pilot's PRD records must report the error or inaccuracy to the PRD in a form and manner acceptable to the Administrator.

#### § 111.10 [Amended]

■ 6. Effective September 10, 2029, amend § 111.10 by removing the definition of "historical record".

#### § 111.15 [Amended]

■ 7. Effective October 8, 2021, amend § 111.15 by removing paragraph (a) and redesignating paragraphs (b) through (f) as paragraphs (a) through (e).

#### § 111.100 [Amended]

■ 8. Effective June 10, 2022, amend § 111.100 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

■ 9. Effective June 10, 2022, amend § 111.200 by revising paragraph (b) to read as follows:

#### § 111.200 Applicability.

\* \* \* \* \*

(b) Compliance is required for this subpart as follows:

(1) Compliance with this subpart is required within 30 days of the reporting entity commencing aircraft operations.

(2) Specific compliance dates for records described in § 111.205(b)(2) are set forth in § 111.255.

\* \* \* \* \*

■ 10. Effective September 10, 2029, further amend § 111.200 by revising paragraph (b) to read as follows:

#### § 111.200 Applicability.

\* \* \* \* \*

(b) Compliance with this subpart is required beginning within 30 days of the reporting entity commencing aircraft operations.

\* \* \* \* \*

#### § 111.205 [Amended]

■ 11. Effective September 9, 2024, amend § 111.205 by removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2).

■ 12. Effective September 9, 2024, amend § 111.215 by revising paragraph (a) to read as follows:

#### § 111.215 Method of Reporting.

(a) Except as provided in paragraph (b) of this section, all records required to be reported to the PRD under this subpart must be reported within 30 days of the effective date of the record, or within 30 days of the record becoming final when the record is a disciplinary action record or a separation from employment record.

\* \* \* \* \*

#### § 111.215 [Amended]

■ 13. Effective September 8, 2027, further amend § 111.215 by removing paragraph (c).

#### § 111.255 [Removed]

■ 14. Effective September 10, 2029, § 111.255 is removed.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), U.S.C. 106(f), 106(g) 44701(a), 44703, 44711, 46105, and 46301 on or about May 25, 2021.

**Steve Dickson,**

*Administrator, Federal Aviation Administration.*

[FR Doc. 2021-11424 Filed 6-9-21; 8:45 am]

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General Services Administration

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National Aeronautics and Space Administration

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48 CFR Chapter 1

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Federal Acquisition Regulation; Federal Acquisition Circular 2021-06; Introduction; Analysis for Equipment Acquisitions; Application of Micro-Purchase Threshold to Task and Delivery Orders; Technical Amendments and Federal Acquisition Circular 2021-06; Small Entity Compliance Guide; Final Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket No. FAR-2021-0051, Sequence No. 3]

**Federal Acquisition Regulation; Federal Acquisition Circular 2021-06; Introduction**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2021-06. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

**DATES:** For effective dates see the separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

**RULES LISTED IN FAC 2021-06**

Item	Subject	FAR Case	Analyst
I .....	Analysis for Equipment Acquisitions .....	2019-001	Jackson.
II .....	Application of Micro-purchase Threshold to Task and Delivery Orders .....	2020-004	Jackson.
III .....	Technical Amendments.		

**ADDRESSES:** The FAC, including the SECG, is available via the internet at <https://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2021-06 amends the FAR as follows:

**Item I—Analysis for Equipment Acquisitions (FAR Case 2019-001)**

This final rule amends the FAR to implement section 555 of the FAA Reauthorization Act of 2018 (Pub. L. 115-254). Section 555 requires an agency to acquire equipment using the method of acquisition that is most advantageous to the Government based on a case-by-case analysis. The methods of acquisition to be considered include purchase, short-term rental or lease, long-term rental or lease, interagency acquisition, and agency acquisition agreements, if applicable, with a state or local government. The case-by-case analysis is of comparative costs and other factors, to include the factors in FAR section 7.401.

**Item II—Application of Micro-purchase Threshold to Task and Delivery Orders (FAR Case 2020-004)**

This final rule amends the FAR to implement section 826 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92), which increases the threshold for requiring fair opportunity on orders

under multiple-award contracts from \$2,500 to the “micro-purchase threshold”. The threshold at FAR 16.505 is currently \$3,500, as a result of inflation adjustments in accordance with FAR 1.109. The micro-purchase threshold is currently \$10,000. This change applies the word-based threshold to ensure continued alignment with any future changes to the thresholds. This final rule will not have a significant economic impact on a substantial number of small entities.

**Item III—Technical Amendments**

Editorial changes are made at FAR 11.201, 19.102, 19.201, 19.702, 19.812, 22.805, 26.201, 42.203, 52.211-2, 52.212-1, 52.212-5, 52.213-4, 52.222-8, 52.244-6, and 53.236-2.

William F. Clark,  
 Director,  
 Office of Government-wide Acquisition Policy,  
 Office of Acquisition Policy,  
 Office of Government-wide Policy.  
 Federal Acquisition Circular (FAC) 2021-06 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2021-06 is effective June 10,

2021 except for Items I through III, which are effective July 12, 2021.

**John M. Tenaglia,**  
*Principal Director, Defense Pricing and Contracting, Department of Defense.*

**Jeffrey A. Koses,**  
*Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.*

**Karla Smith Jackson,**  
*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 2021-11865 Filed 6-9-21; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 7**

[FAC 2021-06; FAR Case 2019-001; Item I; Docket No. FAR-2019-0020, Sequence No. 1]

**RIN 9000-AN84**

**Federal Acquisition Regulation: Analysis for Equipment Acquisitions**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the FAA Reauthorization Act of 2018, which requires, when acquiring equipment, a case-by-case analysis of cost and other factors associated with certain methods of acquisition, including purchase, short-term rental or lease, long-term rental or lease, interagency acquisition, and, if applicable, acquisition agreements with a State or local government.

**DATES:** *Effective:* July 12, 2021.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or [Michaelo.jackson@gsa.gov](mailto:Michaelo.jackson@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2021–06 and FAR Case 2019–001.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published a proposed rule at 85 FR 52081, on August 24, 2020, to implement section 555 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) (FAA stands for Federal Aviation Administration), which:

- Requires an agency to acquire equipment using the method of acquisition that is most advantageous to the Government based on a case-by-case analysis of comparative costs and other factors (to include the factors in FAR section 7.401);
- Identifies methods of acquisition that must be considered, at a minimum, in the analysis; and
- Requires the FAR to implement the requirements of the section and identify the factors agencies should or shall consider to perform the case-by-case analysis.

Five respondents submitted public comments in response to the proposed rule.

**II. Discussion and Analysis**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. No changes were made to the final rule as a result of public comments. To maintain consistency throughout the rule text, a minor change was made to the final rule at FAR 7.403(a) to ensure the terms “rent” and “lease” are used in the same order throughout the rule. A minor edit was also made to FAR

7.403(b)(2) to replace the obsolete weblink for the Schedule 51 V Hardware Superstore with an updated one.

Several respondents expressed support for the rule and the Councils acknowledge this support for the rule. The remaining respondents provided comments that were outside the scope of this rule.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items**

This final rule does not create any new provisions or clauses, nor does it change the applicability or burden of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT or for commercial items, including COTS items.

**IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

**V. Congressional Review Act**

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

**VI. Regulatory Flexibility Act**

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

This rule is necessary to implement section 555 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254). The objective of the rule is to ensure agencies acquire equipment using the method of acquisition that is most advantageous to the Government based on a case-by-case analysis of comparative costs and other factors.

There were no significant issues raised in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities; most of the impact will be on the Government. The rule primarily affects internal Government requirements determination decisions, acquisition strategy decisions, and contract file documentation requirements. The Government does not collect data on the total number of solicitations issued on an annual basis that are subject to the analysis of FAR subpart 7.4. However, the Federal Procurement Data System (FPDS) collects information on the product service code (PSC) assigned to a contract based on the predominant supply or service being acquired. FPDS data for fiscal years 2016–2018, on PSCs for approximately 100 types of equipment and 80 types of equipment rental or lease services, indicates that the Federal Government awards an average of 125,940 new contracts and orders annually, of which approximately 54,845 (44 percent) were awarded to approximately 6,940 unique small businesses.

This rule does not impose any reporting, recordkeeping, or other compliance requirements.

There are no alternatives that are consistent with the objectives of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

**VII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

**List of Subjects in 48 CFR Part 7**

Government procurement.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 7 as set forth below:

**PART 7—ACQUISITION PLANNING**

- 1. The authority citation for 48 CFR part 7 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.



**Subpart 7.4—Equipment Acquisition**

■ 2. Revise the heading of subpart 7.4 to read as set forth above.

■ 3. Revise section 7.400 to read as follows:

**7.400 Scope of subpart.**

This subpart—

(a) Implements section 555 of the FAA (Federal Aviation Administration) Reauthorization Act of 2018 (Pub. L. 115–254);

(b) Provides guidance when acquiring equipment and more than one method of acquisition is available for use; and

(c) Applies to both the initial acquisition of equipment and the renewal or extension of existing equipment leases or rental agreements.

■ 4. Revise section 7.401 to read as follows:

**7.401 Acquisition considerations.**

(a)(1) Agencies shall acquire equipment using the method of acquisition most advantageous to the Government based on a case-by-case analysis of comparative costs and other factors in accordance with this subpart and agency procedures.

(2) The methods of acquisition to be compared in the analysis shall include, at a minimum—

- (i) Purchase;
- (ii) Short-term rental or lease;
- (iii) Long-term rental or lease;
- (iv) Interagency acquisition (see 2.101); and

(v) Agency acquisition agreements, if applicable, with a State or local government.

(b)(1) The factors to be compared in the analysis shall include, at a minimum:

(i) Estimated length of the period the equipment is to be used and the extent of use within that period;

(ii) Financial and operating advantages of alternative types and makes of equipment;

(iii) Cumulative rent, lease, or other periodic payments, however described, for the estimated period of use;

(iv) Net purchase price;

(v) Transportation, installation, and storage costs;

(vi) Maintenance, repair, and other service costs; and

(vii) Potential obsolescence of the equipment because of imminent technological improvements.

(2) The following additional factors should be considered, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment:

(i) Availability of purchase options.

(ii) Cancellation, extension, and early return conditions and fees.

(iii) Ability to swap out or exchange equipment.

(iv) Available warranties.

(v) Insurance, environmental, or licensing requirements.

(vi) Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.

(vii) Trade-in or salvage value.

(viii) Imputed interest.

(ix) Availability of a servicing capability, especially for highly complex equipment; *e.g.*, can the equipment be serviced by the Government or other sources if it is purchased?

(c) The analysis in paragraph (a) is not required—

(1) When the President has issued an emergency declaration or a major disaster declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*);

(2) In other emergency situations if the agency head makes a determination that obtaining such equipment is necessary in order to protect human life or property; or

(3) When otherwise authorized by law.

■ 5. Amend section 7.402 by—

■ a. Removing from paragraph (a)(1) “cumulative leasing” and adding “cumulative rental or leasing” in its place;

■ b. Removing from paragraph (a)(2) “favor of leasing” and adding “favor of renting or leasing” in its place;

■ c. Revising the paragraph (b) subject heading, paragraph (b)(1) introductory text, and paragraph (b)(2);

■ d. Removing from paragraph (b)(3) “long term lease” and adding “long term rental or lease agreement” in its place; and

■ e. Removing from paragraph (b)(4) “If a lease with option” and adding “If a rental or lease agreement with option” in its place.

The revisions read as follows:

**7.402 Acquisition methods.**

\* \* \* \* \*

(b) *Rent or lease method.* (1) The rent or lease method is appropriate if it is to the Government’s advantage under the circumstances. The rent or lease method may also serve as a short-term measure when the circumstances—

\* \* \* \* \*

(2) If a rent or lease method is justified, a rental or lease agreement with option to purchase is preferable.

\* \* \* \* \*

■ 6. Amend section 7.403 by—

■ a. Revising the section heading;

■ b. Removing from paragraph (a) introductory text “in lease or” and adding “in rent, lease, or” in its place;

■ c. Revising paragraph (b); and

■ d. Adding paragraph (c).

The revisions and addition read as follows:

**7.403 General Services Administration assistance and OMB guidance.**

\* \* \* \* \*

(b) For additional GSA assistance and guidance, agencies may—

(1) Request information from the GSA FAS National Customer Service Center by phone at 1–800–488–3111 or by email at [ncscustomer.service@gsa.gov](mailto:ncscustomer.service@gsa.gov); and

(2) See GSA website, Schedule 51 V Hardware Superstore-Equipment Rental, (<https://www.gsa.gov/buying-selling/products-services/industrial-products-services/rental-of-industrial-equipment>).

(c) For additional OMB guidance, see—

(1) Section 13, Special Guidance for Lease-Purchase Analysis, and paragraph 8.c.(2), Lease-Purchase Analysis, of OMB Circular A–94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, (<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A94/a094.pdf>); and

(2) Appendix B, Budgetary Treatment of Lease-Purchases and Leases of Capital Assets, of OMB Circular A–11, Preparation, Submission, and Execution of the Budget, ([https://www.whitehouse.gov/wp-content/uploads/2018/06/app\\_b.pdf](https://www.whitehouse.gov/wp-content/uploads/2018/06/app_b.pdf)).

**7.404 [Amended]**

■ 7. Amend section 7.404 by removing “a lease with” and adding “a rental or lease agreement with” in its place.

[FR Doc. 2021–11866 Filed 6–9–21; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Part 16**

[FAC 2021–06; FAR Case 2020–004; Item II; Docket No. FAR–2020–0004, Sequence No. 1]

RIN 9000–AO04

**Federal Acquisition Regulation:  
Application of Micro-Purchase  
Threshold to Task and Delivery Orders**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that raises the threshold for fair opportunity on certain task and delivery orders to the micro-purchase threshold.

**DATES:** *Effective:* July 12, 2021.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or [Michaelo.jackson@gsa.gov](mailto:Michaelo.jackson@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAC 2021–06 and FAR Case 2020–004.

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD, GSA, and NASA published a proposed rule at 85 FR 67327, on October 22, 2020, to implement section 826 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92), which increases the threshold for requiring fair opportunity on orders under multiple-award contracts from \$2,500 to the “micro-purchase threshold”. The fair opportunity to be considered at FAR 16.505(b)(1) applies to orders over the threshold unless an exception at 16.505(b)(2) applies. The threshold at FAR 16.505 is currently \$3,500, as a result of inflation adjustments in accordance with FAR 1.109. The micro-purchase threshold (MPT) is \$10,000 (FAR case 2018–004 published on July 2, 2020, at 85 FR 40064).

**II. Discussion and Analysis**

There were no public comments submitted in response to the proposed rule, and no changes were made to the final rule.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This final rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the simplified acquisition threshold, or for commercial items, including commercially available off-the-shelf items.

**IV. Expected Impact of the Rule**

DoD, GSA, and NASA have performed an analysis for this final rule. This rule is expected to reduce the public burden because the threshold increase will reduce costs to submit an offer for the unsuccessful awardees who participate in fair opportunity competitions for orders under FAR part 16. DoD, GSA, and NASA recognize some awardees may be impacted by a reduction in the number of opportunities an awardee may have to receive an award of a delivery or task order through fair opportunity. Using Federal Procurement Data System (FPDS) data from FY 2017 through FY 2019, the average number of fair opportunity task or delivery orders under FAR part 16 procedures is approximately 9,800 orders annually. DoD, GSA, and NASA estimate that the Government receives an average of three offers for each of the 9,800 task or delivery orders, resulting in an estimated 19,600 (9,800 × 2) unsuccessful offers. There are costs to submit the estimated 19,600 unsuccessful offers, which will be eliminated by this rule.

DoD, GSA, and NASA recognize that the increase in the MPT in FAR Case 2018–004 has resulted in an increased use of the Governmentwide commercial purchase card and a general reduction in the number of FAR part 16 delivery and task orders awarded between \$3,500 and \$10,000. According to FPDS, there were 12,911 fair opportunity FAR part 16 awards between \$3,500 and \$10,000 in FY 2017. In contrast, there were 6,421 awards in FY 2019; a decrease of almost 50%. This decrease can be attributed to the preference given to the Governmentwide commercial purchase card for procurements under the MPT. While it is unclear whether there will be further decreases in the number of FAR

part 16 fair opportunity awards, it is clear that the increased MPT implemented by FAR Case 2018–004 has already reduced the public and Government burden by approximately 50% by shifting procurements from FAR part 16 delivery and task orders to Governmentwide commercial purchase cards.

DoD, GSA, and NASA expect the rule to also reduce burden on the Government and streamline procurements for FAR part 16 orders below the MPT. Contracting officers will not be required to review multiple offers to make award, resulting in time savings for each order awarded.

**V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

**VI. Congressional Review Act**

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA and NASA will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

**VII. Regulatory Flexibility Act**

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

This final rule amends the Federal Acquisition Regulation to implement section 826 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92), which raises the threshold for fair opportunity on certain task and delivery orders to the word-based, “micro-purchase threshold”.

The objective of the rule is to increase the threshold for requiring fair opportunity on FAR part 16 orders under multiple-award contracts from \$3,500 to the word-based, “micro-purchase threshold” for consistency of application and alignment with future adjustments. The legal basis for the rule is section 826 of the NDAA for FY 2020 (Pub. L. 116–92).

There were no significant issues raised in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities; most of the impact will be on the Government. This rule will likely affect small entities that participate in fair opportunity competitions for FAR part 16 task and delivery orders under multiple-award contracts conducted by the Federal Government between \$3,500 and the micro-purchase threshold, which currently is \$10,000. DoD, GSA, and NASA do not expect a significant change in the number of orders awarded to small entities; however, in certain circumstances this rule is expected to reduce the costs associated with developing and submitting a response to task and delivery order competitions for actions up to \$10,000. To assess the impact of the threshold increase, data was obtained from FPDS. For FY 2017 through FY 2019, there was an average of 9,803 FAR part 16 task and delivery orders awarded using fair opportunity between \$3,500 and \$10,000. Of these actions, an average of 5,852 were awarded to 843 unique small entities. As a result of this rule, it is assumed that approximately 843 small entities may experience a reduction in proposal costs on task and delivery orders valued between \$3,500 and \$10,000.

This rule does not impose any reporting, recordkeeping, or other compliance requirements.

There are no alternatives that are consistent with the objectives of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

### VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

#### List of Subjects in 48 CFR Part 16

Government procurement.

#### William F. Clark,

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as set forth below:

### PART 16—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 16 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

#### 16.505 [Amended]

■ 2. Amend section 16.505 by—

■ a. Removing from paragraph (b)(1)(i) introductory text “\$3,500” and adding “the micro-purchase threshold” in its place;

■ b. Removing from paragraph (b)(2)(i) introductory text “delivery-order or task-order exceeding \$3,500” and adding “delivery order or task order exceeding the micro-purchase threshold” in its place; and

■ c. Removing from the paragraph (b)(2)(ii)(A) subject heading “\$3,500” and adding “the micro-purchase threshold” in its place.

[FR Doc. 2021–11864 Filed 6–9–21; 8:45 am]

**BILLING CODE 6820–EP–P**

### DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 11, 19, 22, 26, 42, 52, and 53

[FAC 2021–06; Item III; Docket No. FAR–2021–0052; Sequence No. 2]

#### Federal Acquisition Regulation; Technical Amendments

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make needed editorial changes.

**DATES:** *Effective:* July 12, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAC 2021–06, Technical Amendment.

**SUPPLEMENTARY INFORMATION:** This document makes editorial changes to 48 CFR parts 11, 19, 22, 26, 42, 52 and 53 of the FAR.

#### List of Subjects in 48 CFR Parts 11, 19, 22, 26, 42, 52, and 53

Government procurement.

#### William F. Clark,

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 11, 19, 22, 26, 42, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 11, 19, 22, 26, 42, 52, and 53 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

#### PART 11—DESCRIBING AGENCY NEEDS

##### 11.201 [Amended]

■ 2. Amend section 11.201 by removing paragraph (d)(2)(iii).

#### PART 19—SMALL BUSINESS PROGRAMS

##### 19.102 [Amended]

■ 3. Amend section 19.102 by removing from paragraph (a)(2) “<https://www.census.gov/eos/www/naics/>” and adding “<https://www.census.gov/naics/>” in its place.

##### 19.201 [Amended]

■ 4. Amend section 19.201 by removing from paragraph (c)(1) “Director of Small” and adding “Director of the Office of Small” in its place.

##### 19.702 [Amended]

■ 5. Amend section 19.702 by removing from paragraph (d) “[http://www.acq.osd.mil/osbp/mentor\\_protege/](http://www.acq.osd.mil/osbp/mentor_protege/)” and adding “<https://business.defense.gov/Programs/Mentor-Protege-Program/>” in its place.

##### 19.812 [Amended]

■ 6. Amend section 19.812 by removing from paragraph (a) “<https://pubapp.dcmil/CASD/main.jsp>” and adding “<https://piee.eb.mil/pcm/xhtml/unauth/index.xhtml>” in its place.

#### PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

##### 22.805 [Amended]

■ 7. Amend section 22.805 by removing from paragraph (a)(4)(i) “[https://ofccp.dol-esa.gov/preaward/pa\\_reg.html](https://ofccp.dol-esa.gov/preaward/pa_reg.html)” and adding “<https://www.dol.gov/agencies/ofccp/pre-award/registry>” in its place.

**PART 26—OTHER SOCIOECONOMIC PROGRAMS**

**26.201 [Amended]**

■ 8. Amend section 26.201 in the definition “Major disaster or emergency area” by removing “<http://www.fema.gov/news/disasters.fema>” and adding “<https://www.fema.gov/disasters/disaster-declarations>” in its place.

**PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

**42.203 [Amended]**

■ 9. Amend section 42.203 by removing “<https://pubapp.dcma.mil/CASD/main.jsp>” and adding “<https://piee.eb.mil/pcm/xhtml/unauth/index.xhtml>” in its place.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 10. Amend section 52.211–2 by—  
 ■ a. Revising the date of the provision;  
 ■ b. Removing from the end of paragraph (a)(2) the semicolon and adding a period in its place; and  
 ■ c. Removing paragraph (a)(3).  
 The revision reads as follows:

**§52.211–2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).**

\* \* \* \* \*

**Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST) (JUL 2021)**

\* \* \* \* \*

■ 11. Amend section 52.212–1 by—  
 ■ a. Revising the date of the clause; and  
 ■ b. Removing paragraph (i)(2)(iii).  
 The revision reads as follows:

**§52.212–1 Instructions to Offerors—Commercial Items.**

\* \* \* \* \*

**Instructions to Offerors—Commercial Items (JUL 2021)**

\* \* \* \* \*

■ 12. Amend section 52.212–5 by—  
 ■ a. Revising the clause heading and the date of the clause;  
 ■ b. Removing from paragraph (b)(51) “(JUN 2008)” and adding “(FEB 2021)” in its place;  
 ■ c. Removing from paragraph (b)(55) “(JUN 2020)” and adding “(FEB 2021)” in its place  
 ■ d. Removing from paragraphs (b)(63)(i) and (e)(1)(xxii) “46 U.S.C. Appx. 1241(b)” and adding “46 U.S.C. 55305” in their places, respectively; and

■ e. In Alternate II—  
 ■ i. Revising the date of the Alternate; and  
 ■ ii. Removing from paragraph (e)(1)(ii)(U) “46 U.S.C. Appx. 1241(b)” and adding “46 U.S.C. 55305” in its place.

The revisions read as follows:

**§52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JUL 2021)**

\* \* \* \* \*

**Alternate II (JUL 2021). \* \* \***

■ 13. Amend section 52.213–4 by—  
 ■ a. Revising the date of the clause;  
 ■ b. Removing from paragraph (a)(1)(vii) “(JUN 2008)” and adding “(FEB 2021)” in its place;  
 ■ c. Removing from paragraph (a)(2)(viii) “(NOV 2020)” and adding “(JUL 2021)” in its place; and  
 ■ d. Removing from paragraph (b)(1)(xxi) “46 U.S.C. App. 1241” and adding “46 U.S.C. 55305” in its place.  
 The revision reads as follows:

**§52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

\* \* \* \* \*

**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (JUL 2021)**

\* \* \* \* \*

■ 14. Amend section 52.222–8 by—  
 ■ a. Revising the date of the clause; and  
 ■ b. Removing from paragraph (b)(1) “<http://www.dol.gov/whd/forms/wh347.pdf>” and adding “<https://www.dol.gov/agencies/whd/forms>” in its place.

The revision reads as follows:

**§52.222–8 Payrolls and Basic Records.**

\* \* \* \* \*

**Payrolls and Basic Records (JUL 2021)**

\* \* \* \* \*

■ 15. Amend section 52.244–6 by—  
 ■ a. Revising the date of the clause; and  
 ■ b. Removing from paragraph (c)(1)(xx) “46 U.S.C. App. 1241” and adding “46 U.S.C. 55305” in its place.  
 The revision reads as follows:

**§52.244–6 Subcontracts for Commercial Items.**

\* \* \* \* \*

**Subcontracts for Commercial Items (JUL 2021)**

\* \* \* \* \*

**PART 53—FORMS**

**§53.236–2 [Amended]**

■ 16. Amend section 53.236–2 by removing from the paragraph (b) subject heading “(Rev. 8/2016)” and adding “(Rev. JUL 2021)” in its place.

[FR Doc. 2021–11867 Filed 6–9–21; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

[Docket No. FAR–2021–0051, Sequence No. 3]

**Federal Acquisition Regulation; Federal Acquisition Circular 2021–06; Small Entity Compliance Guide**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2021–06, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2021–06, which precedes this document.

**DATES:** June 10, 2021.

**ADDRESSES:** The FAC, including the SECG, is available via the internet at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2021–06 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). An asterisk (\*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2021-06

Item	Subject	FAR Case	Analyst
*I .....	Analysis for Equipment Acquisitions .....	2019-001	Jackson.
*II .....	Application of Micro-purchase Threshold to Task and Delivery Orders .....	2020-004	Jackson.
III .....	Technical Amendments.		

**SUPPLEMENTARY INFORMATION:**

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2021-06 amends the FAR as follows:

**Item I—Analysis for Equipment Acquisitions (FAR Case 2019-001)**

This final rule amends the FAR to implement section 555 of the FAA Reauthorization Act of 2018 (Pub. L. 115-254). Section 555 requires an agency to acquire equipment using the method of acquisition that is most advantageous to the Government based on a case-by-case analysis. The methods of acquisition to be considered include purchase, short-term rental or lease, long-term rental or lease, interagency

acquisition, and agency acquisition agreements, if applicable, with a state or local government. The case-by-case analysis is of comparative costs and other factors, to include the factors in FAR section 7.401.

**Item II—Application of Micro-Purchase Threshold to Task and Delivery Orders (FAR Case 2020-004)**

This final rule amends the FAR to implement section 826 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116-92), which increases the threshold for requiring fair opportunity on orders under multiple-award contracts from \$2,500 to the “micro-purchase threshold”. The threshold at FAR 16.505 is currently \$3,500, as a result of inflation adjustments in accordance with FAR 1.109. The micro-purchase

threshold is currently \$10,000. This change applies the word-based threshold to ensure continued alignment with any future changes to the thresholds. This final rule will not have a significant economic impact on a substantial number of small entities.

**Item III—Technical Amendments**

Editorial changes are made at FAR 11.201, 19.102, 19.201, 19.702, 19.812, 22.805, 26.201, 42.203, 52.211-2, 52.212-1, 52.212-5, 52.213-4, 52.222-8, 52.244-6, and 53.236-2.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*  
[FR Doc. 2021-11868 Filed 6-9-21; 8:45 am]

**BILLING CODE 6820-EP-P**



# FEDERAL REGISTER

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Vol. 86

Thursday,

No. 110

June 10, 2021

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## Part IV

### The President

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Executive Order 14033—Blocking Property and Suspending Entry Into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans

Notice of June 8, 2021—Continuation of the National Emergency With Respect to the Western Balkans

Notice of June 8, 2021—Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons To Undermine Democratic Processes or Institutions of Belarus



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# Presidential Documents

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Title 3—

Executive Order 14033 of June 8, 2021

The President

## Blocking Property and Suspending Entry Into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13219 of June 26, 2001 (Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans), as amended by Executive Order 13304 of May 28, 2003 (Termination of Emergencies With Respect to Yugoslavia and Modification of Executive Order 13219 of June 26, 2001), finding that the situation in the territory of the former Socialist Federal Republic of Yugoslavia and the Republic of Albania (the Western Balkans), over the past two decades, including the undermining of post-war agreements and institutions following the breakup of the former Socialist Federal Republic of Yugoslavia, as well as widespread corruption within various governments and institutions in the Western Balkans, stymies progress toward effective and democratic governance and full integration into transatlantic institutions, and thereby constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.

Accordingly, I hereby order:

**Section 1.** (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to be responsible for or complicit in, or to have directly or indirectly engaged in, actions or policies that threaten the peace, security, stability, or territorial integrity of any area or state in the Western Balkans;

(ii) to be responsible for or complicit in, or to have directly or indirectly engaged in, actions or policies that undermine democratic processes or institutions in the Western Balkans;

(iii) to be responsible for or complicit in, or to have directly or indirectly engaged in, a violation of, or an act that has obstructed or threatened the implementation of, any regional security, peace, cooperation, or mutual recognition agreement or framework or accountability mechanism related to the Western Balkans, including the Prespa Agreement of 2018; the Ohrid Framework Agreement of 2001; United Nations Security Council Resolution 1244; the Dayton Accords; or the Conclusions of the Peace Implementation Conference Council held in London in December 1995, including the decisions or conclusions of the High Representative, the Peace Implementation Council, or its Steering Board; or the International Criminal Tribunal for the former Yugoslavia, or, with respect to the former Yugoslavia, the International Residual Mechanism for Criminal Tribunals;



(iv) to be responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse in the Western Balkans;

(v) to be responsible for or complicit in, or to have directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery;

(vi) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order; or

(vii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

**Sec. 2.** The prohibitions in section 1 of this order include:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

**Sec. 3.** I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1(a) of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13219, as amended by Executive Order 13304, and as expanded in this order, and I hereby prohibit such donations as provided by section 1 of this order.

**Sec. 4.** (a) The unrestricted immigrant and nonimmigrant entry into the United States of noncitizens determined to meet one or more of the criteria in section 1(a) of this order would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended, except when the Secretary of State or the Secretary of Homeland Security, as appropriate, determines that the person's entry would not be contrary to the interests of the United States, including when the Secretary of State or Secretary of Homeland Security, as appropriate, so determines, based on a recommendation of the Attorney General, that the person's entry would further important United States law enforcement objectives.

(b) The Secretary of State shall implement this order as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security, may establish.

(c) The Secretary of Homeland Security shall implement this order as it applies to the entry of noncitizens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish.

(d) Such persons shall be treated by this section in the same manner as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

**Sec. 5.** (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

**Sec. 6.** For the purposes of this order:

(a) the term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term “noncitizen” means any person who is not a citizen or noncitizen national of the United States;

(c) the term “person” means an individual or entity; and

(d) the term “United States person” means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

**Sec. 7.** For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13219, as amended by Executive Order 13304, and as expanded by this order, there need be no prior notice of a listing or determination made pursuant to this order.

**Sec. 8.** The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All executive departments and agencies of the United States shall take all appropriate measures within their authority to implement this order.

**Sec. 9.** Nothing in this order shall prohibit transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof.

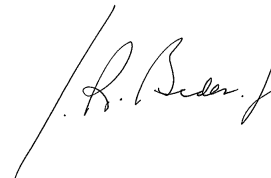
**Sec. 10.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(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,  
*June 8, 2021.*

## Presidential Documents

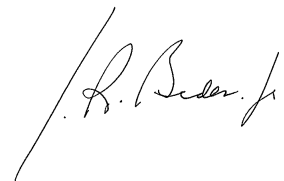
Notice of June 8, 2021

### Continuation of the National Emergency With Respect to the Western Balkans

On June 26, 2001, by Executive Order 13219, the President declared a national emergency with respect to the Western Balkans pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of persons engaged in, or assisting, sponsoring, or supporting, (i) extremist violence in the former Republic of Macedonia (what is now the Republic of North Macedonia) and elsewhere in the Western Balkans region, or (ii) acts obstructing implementation of the Dayton Accords in Bosnia or United Nations Security Council Resolution 1244 of June 10, 1999, in Kosovo. The President subsequently amended that order in Executive Order 13304 of May 28, 2003, to take additional steps with respect to certain actions that obstruct implementation of, among other things, the Ohrid Framework Agreement of 2001 relating to Macedonia.

The actions of persons threatening the peace and international stabilization efforts in the Western Balkans, including acts of extremist violence and obstructionist activity, continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on June 26, 2001, must continue in effect beyond June 26, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared with respect to the Western Balkans in Executive Order 13219.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,  
June 8, 2021.

## Presidential Documents

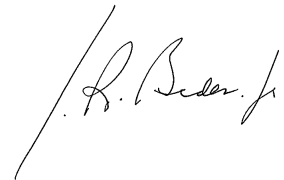
Notice of June 8, 2021

### **Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons To Undermine Democratic Processes or Institutions of Belarus**

On June 16, 2006, by Executive Order 13405, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons to undermine Belarus's democratic processes or institutions, manifested in the fundamentally undemocratic March 2006 elections; to commit human rights abuses related to political repression, including detentions and disappearances; and to engage in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

The actions and policies of certain members of the Government of Belarus and other persons continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on June 16, 2006, must continue in effect beyond June 16, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,  
*June 8, 2021.*

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