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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 52

**[NRC–2020–0269]**

**RIN 3150–AK56**

### Extending the Duration of the AP1000 Design Certification

### Correction

In rule document 2021–20226, appearing on pages 52593–52599, in the issue of Wednesday, September 22, 2021, make the following corrections:

**Appendix D to Part 52—Design Certification Rule for the AP1000 Design [Corrected]**

■ 1. On page 52599, in the first column, under section ''V. Applicable Regulations'',

''A. * * * The regulations that apply to . . .''

should read:

''A. * * *

3. The regulations that apply to . . .''

■ 2. On page 52599, in the first column, under section ''VI. Issue Resolution'',

''B. * * * All nuclear safety issues, except . . .''

should read:

''B. * * *

1. All nuclear safety issues, except . . .''

[FR Doc. C1–2021–20226 Filed 10–8–21; 8:45 am]

**BILLING CODE 0099–10–P**

## DEPARTMENT OF JUSTICE

### Parole Commission

### 28 CFR Part 2

**[Docket No. USPC–2021–06]**

**RIN 1104–AA11**

### Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The United States Parole Commission is amending its rules concerning cases designated as ''Original Jurisdiction'' to eliminate the designation, voting, appeal, and early termination of parole procedures. After these amendments, cases currently designated as ''Original Jurisdiction'' will have that designation removed and the voting procedures, appeals, and early termination process will proceed in the same manner as federal parole cases not previously designated as ''Original Jurisdiction.''

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

**FOR FURTHER INFORMATION CONTACT:** Gregory Thornton, Assistant General Counsel, U.S. Parole Commission, 90 K Street NE, Third Floor, Washington, DC 20530, telephone (202) 346–7033. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

**SUPPLEMENTARY INFORMATION:** Rule 28 CFR 2.17 governs ''Original Jurisdiction'' cases. In essence, 28 CFR 2.17 allowed a Regional Commissioner to refer high profile or complex cases to the Commission's National Commissioners for a majority vote. The purpose of the rule was to ensure consistency in Commission decisions while also allowing the National Commissioners to set the Commission's national policy. All Commissioners are now National Commissioners and there are no longer differences in decision making by region. Therefore, the utility of 28 CFR 2.17 no longer exists.

Likewise, rule 28 CFR 2.24(b)(1) explains the process for designating a case as ''Original Jurisdiction.'' Removing 28 CFR 2.17 makes this rule meaningless and it must be removed as well.

Similarly, rule 28 CFR 2.27 governs petitions for reconsideration of cases decided under the ''Original Jurisdiction'' procedures stated in 28 CFR 2.17. With the amendment to 28 CFR 2.17 which eliminates ''Original Jurisdiction'' cases after the publication of the final rule, there is no further purpose to 28 CFR 2.27. Federal parole eligible inmates and parolees will still have the ability to submit an administrative appeal pursuant to 28 CFR 2.26.

Additionally, rule 28 CFR 2.28(a) merely makes reference to ''Original Jurisdiction'' cases and this amendment removes the reference to ''Original Jurisdiction'' cases as that designation no longer exists.

Finally, rule 28 CFR 2.43 governs how the U.S. Parole Commission can terminate parole supervision before the date of the expiration of the criminal sentence. In particular, 28 CFR 2.43(f) explains that the voting procedure for terminating parole supervision early for a case designated as ''Original Jurisdiction'' must comply with the requirements of 28 CFR 2.17. With the removal of 28 CFR 2.17 which eliminates ''Original Jurisdiction'' cases after the publication of the final rule, there is no further purpose to 28 CFR 2.43(f) because no cases will remain designated as ''Original Jurisdiction.'' Similarly, 28 CFR 2.43(e) states the procedure for appealing an adverse early termination decision and makes reference to the ''Original Jurisdiction'' appeal procedure as stated in 28 CFR 2.27. With the rule changes eliminating ''Original Jurisdiction'' designations and thus ''Original Jurisdiction'' voting and appellate procedures, modifying 28 CFR 2.43(e) and (f) to eliminate reference to ''Original Jurisdiction'' procedures is appropriate.

The amended rules will take effect upon publication in the **Federal Register** and will apply to the cases designated as ''Original Jurisdiction'' on the effective date.

### Executive Orders 12866 and 13563

These regulations have been drafted and reviewed in accordance with Executive Order 12866, ''Regulation Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13565,

''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation. The Commission has determined that these rules are not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly these rules have not been reviewed by the Office of Management and Budget.

**Executive Order 13132**

These rules will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

**Regulatory Flexibility Act**

These rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

**Unfunded Mandates Reform Act of 1995**

These rules will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

**Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)**

These rules are not considered ''major rules'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act, now codified at 5 U.S.C. 804(2). These rules will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Prisoners, Probation and parole.

**The Final Rule**

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2:

## PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

**§ 2.17 [Removed and Reserved]**

■ 2. Remove and reserve § 2.17.

■ 3. Amend § 2.24 by revising paragraph (b) to read as follows:

**§ 2.24 Review of panel recommendation by the Regional Commissioner.**

* * * * *

(b) Upon review of the panel recommendation, the Regional Commissioner may also remand the case for a rehearing, with the notice of such action specifying the purpose of the rehearing.

**§ 2.27 [Removed and Reserved]**

■ 4. Remove and reserve § 2.27.

■ 5. Amend § 2.28 by revising paragraph (a) to read as follows:

**§ 2.28 Reopening of cases.**

(a) *Favorable information or information supporting medical parole or compassionate release.* Upon the receipt of new information of substantial significance favorable to the prisoner, including medical information, or other extraordinary and compelling information, a Commissioner may reopen a case, and order a special reconsideration hearing on the next available docket, or modify the previous decision. The advancement of a presumptive release date or a decision to continue to a 15-year reconsideration hearing requires the concurrence of two Commissioners.

* * * * *

■ 6. Amend § 2.43 by:

■ a. Revising paragraph (e); and

■ b. Removing and reserving paragraph (f).

The revision reads as follows:

**§ 2.43 Early termination.**

* * * * *

(e) A parolee may appeal an adverse decision under paragraph (c) of this section under § 2.26.

* * * * *

**Patricia K. Cushwa,**

*Chairman (Acting), U.S. Parole Commission.*

[FR Doc. 2021–22241 Filed 10–8–21; 8:45 am]

**BILLING CODE 4410–31–P**

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 17**

**RIN 2900–AQ74**

## Educational Assistance for Certain Former Members of the Armed Forces

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its regulations that govern scholarships to certain health care professionals. This rulemaking implements the mandates of the Consolidated Appropriations Act 2018 by establishing a pilot program to provide educational assistance to certain former members of the Armed Forces for education and training leading to a degree as a physician assistant.

**DATES:** This rule is effective November 12, 2021.

**FOR FURTHER INFORMATION CONTACT:** Scot Burroughs, Executive Director Physician Assistant Services, 810 Vermont Avenue NW, Washington DC 20420, (319) 333–2845. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On July 27, 2020, VA published a proposed rule in the **Federal Register** (85 FR 45135) that would establish a pilot program to provide educational assistance to certain former members of the Armed Forces for education and training leading to a degree as a physician assistant, the Educational Assistance for Certain Former Members of the Armed Forces (EACFMAF) program. VA provided a 60-day comment period, which ended on September 25, 2020. VA received 21 comments on the proposed rule.

Section 246 of Public Law 115–141, the Consolidated Appropriations Act, 2018 (March 23, 2018), established the authority for the EACFMAF. See also 38 United States Code (U.S.C.) 7601 Note (2018) Physician Assistant Education and Training Pilot Program for Former Members of the Armed Forces. This pilot program provides an opportunity for veterans who possess medical experience gained while in the military;

a certificate, undergraduate degree, or post baccalaureate training in a science relating to health care; or participated in the delivery of health care services or related medical services, to further their medical education and become a physician assistant (PA) providing medical care to fellow veterans. The EACFMAF would increase access to VA health care by utilizing a veteran workforce that has received training as a PA in the Armed Forces. Section 246 of Public Law 115–141 sets forth the eligibility criteria, the types of available funding, established an agreement to be met by the participants, as well as the consequences for a breach in such agreement. This final rule establishes the regulations needed to carry out the EACFMAF. Immediately following title 38 of the Code of Federal Regulations (CFR) 17.531, we are adding a new undesignated center heading titled Educational Assistance for Certain Former Members of the Armed Forces and new §§ 17.535 through 17.539.

**General Comments in Support of the Proposed Rule**

Several commenters who were in favor of the rule stated that the EACFMAF is an excellent way to support our veterans and it would provide jobs for veterans with medical or military health experience and would also become vested stakeholders as contributing employees. Several commenters similarly stated that they strongly supported the promoting of opportunities for veterans to transition into the PA profession by providing educational assistance. A commenter also added that the program is critical in maintaining a strong health care workforce for the VA, staffed with people that are not only highly trained, but that have had the experience of serving in the military. Several commenters stated that having veteran PAs would increase patient satisfaction as well as patient health care and will benefit VA as the participants would have intimate knowledge of veteran issues and understand better what the veteran patient is going through. A commenter similarly stated that PAs with former military service gave the best quality of care, explained the care the veteran would receive in terms the veterans could readily understand, and had the needed insight of what the veteran was going through to help such veterans make an informed decision about their medical care. Another commenter stated that this program is a great way to provide additional training to already highly qualified individuals which will lead to a degree and a VA career as a physician assistant.

Another commenter was in favor of the rule and stated that the EACFMAF will offer participants peace of mind in not having to worry about tuition, books, and other expenses while in school and allow the participants to concentrate their efforts in finishing their studies. A commenter similarly stated that the EACFMAF will help reduce the number of homeless veterans by ensuring that they maintain a steady cash flow for their necessities. The commenter added that the concept of paying back all the money that participants receive in the EACFMAF in case they fail the classes sounds fair and will make the participants more responsible in completing their studies. Another commenter agrees in that the proposed rule specified up front the repayment requirements.

One commenter stated that the EACFMAF would be a perfect fit for a veteran who served as a medic in a war zone. The commenter added that they would love to be part of the program. Another commenter added that this is a much-needed scholarship program and that it would improve access to care for veterans. Lastly, the commenter stated that if the EACFMAF should become permanent it would be a direct line of PAs to seek employment in VA.

A commenter stated that other Federal agencies have recently waived requirements for doctors to perform certain intake, vaccination, or other medical procedures under the COVID–19 pandemic and having increased numbers of PAs would save doctors' time as well as increase the availability of health care services, which include examinations, interviewing, and telemedicine procedures. The commenter added that they are aware that veterans often have to travel long distances because of the lack of available physicians in the VA medical facility nearest them, and having PA's available could provide a benefit to these veterans seeking medical care from VA, including through telemedicine. We are not making any changes based on these comments.

**§ 17.536 Eligibility**

*Military and training requirements.* Several commenters suggested that VA not limit the eligibility for the EACFMAF to individuals who have medical or military health experience gained while serving in the military. The commenters stated that there are many servicemembers who decide to pursue a PA degree after leaving the military and should not be limited to what their jobs were in the service. The commenter suggested that the eligibility criteria for the EACFMAF be that the servicemember gets accepted into PA school and not be limited to what their previous job was in the service. Another commenter stated that medical experience as a corpsman or medic may provide priority, but not exclusivity for application to the EACFMAF.

We note that the eligibility criteria for the EACFMAF is set forth in section 246(b) of the Consolidated Appropriations Act, 2018. The applicant has to meet one of these criteria by law in order to qualify for the EACFMAF; VA does not have any flexibility on amending the criteria in the regulation. The second criteria in proposed § 17.536(a) is that the individual has received a certificate, associate degree, baccalaureate degree, master's degree, or post baccalaureate training in a science relating to health care. The veteran does not have to meet this criteria while in military service. This criteria can be met once the veteran is discharged from service. As we have stated in this rulemaking, the purpose EACFMAF is to provide an opportunity to veterans to further their medical education and become a PA providing medical care to fellow veterans. Based on the comments in the previous paragraph, we are clarifying the regulation text to state that in order to qualify for the EACFMAF, a claimant must meet one of the eligibility criteria.

Several commenters were in favor of the rule, but suggested that VA remove the stipulation that the applicants must have a science related degree. A commenter added that PA schools require prerequisite science and math courses to be completed prior to the application process and this requirement is not needed in this proposal, and that the applicants do not need a science degree to enter PA school, but are required to demonstrate the ability to handle science related courses. The commenter indicated that the proposed rule has the potential of removing worthy veteran applicants from consideration because they do not have a science related degree. The commenter also stated that science majors are not the only individuals who make excellent clinical providers. Another commenter similarly stated that the requirement for a degree in health care, biology, physiology, etc. is also not required if the individual has been accepted into a PA education program, and that this requirement should merely give priority to individuals with a health care related degree and not exclude other individuals with other types of degrees.

VA notes that the second eligibility requirement in section 246 of the Consolidated Appropriations Act, 2018

states that one of the eligibility requirements is that the individual has received a certificate, associate degree, baccalaureate degree, master's degree, or postbaccalaureate training in a science relating to health care. We agree with the commenter in that the statutory requirement in section 246 would prevent PAs that graduate from an ARC–PA program and pass the National Commission on Certification of Physician Assistants (NCCPA), from participating in the EACFMAF because the PA does not have health science undergraduate degree. The legislative history of the EACFMAF shows that this program, including its eligibility requirements, is based on an earlier house bill H.R. 3794, 114th Congress, ''Grow Our Own Directive: Physician Assistant Employment and Education Act of 2016''. The House Subcommittee on Health held a hearing on several bills, including H.R. 3794 on April 20, 2016, and the bill was referred to the full House after markup. House Report 114–710 (September 6, 2016). While there are minor differences between H.R. 3794 and enacted section 246 of the Consolidated Appropriations Act, 2018, the eligibility requirements remained unchanged. VA does not have the authority to change eligibility requirements for this pilot program absent a change in the law.

However, VA notes that if the veteran otherwise meets one of the other two eligibility criteria, such veteran may be eligible to participate in the EACFMAF: That the veteran has medical or military health experience gained while serving as a member of the Armed Forces, or has participated in the delivery of health care services or related medical services, including participation in military training relating to the identification, evaluation, treatment, and prevention of disease and disorders. VA has other scholarship programs for participants to receive financial assistance for their health care education, including as a PA, such as the Health Professional Scholarship Program, found at 38 CFR 17.600–17.612. Individuals who do not meet the eligibility criteria for the EACFMAF, may apply for these other scholarship programs if they otherwise meet the eligibility criteria for such scholarship programs. However, these other programs and their eligibility criteria are beyond the scope of the proposed rule. We are not making any changes based on these comments.

*School and Individual requirements.* Another commenter was in favor of the rule, but requested that the requirement in proposed § 17.536(b)(1) be amended to include students who are enrolled or accepted for enrollment in an accredited school located in a State as part-time students. The commenter indicated that veterans could have families and other job requirements that would limit their ability to attend school as a full-time student. The commenter added that if VA allowed participants of the EACFMAF to be enrolled part-time and provide a longer time frame to complete their degree, more veterans would have the opportunity to apply for the scholarship and complete their degree.

VA understands that some students may not be able to attend school on a full-time basis. Proposed § 17.536(b)(1) states that to be eligible for the EACFMAF, an applicant must be unconditionally accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State. These school requirements are in alignment with similar VA scholarship programs. See 38 CFR 17.602. Allowing enrollment on a less than full-time basis will not meet the needs of the EACFMAF, which is a pilot program that will expire unless renewed in five years. As such, we proposed only to provide financial assistance for one to three years under proposed § 17.536(b) and we do not believe that education to become a PA or related professional can be completed on a less than full-time basis prior to the pilot expiring. We are not making any changes based on this comment.

**§ 17.537 Award Procedures**

*Priority.* A commenter was in favor of the proposed rule, but requested that proposed § 17.537(a)(3) be removed because it unfairly favors States that already have adequate PA populations in urban areas and consequently draws viable candidates away from rural locations where their services and expertise are more acutely needed. The commenter also stated that § 17.537(a)(3) goes against the agency's core values of commitment and advocacy by giving priority to eligible individuals who agree to be employed as physician assistants in a VA medical facility that is in a State with a per capita population of veterans of more than five percent. The commenter stated that while VA has the best intentions, the proposed section fails to consider that PA shortages prevalently continue predominantly along an urban-rural dichotomy, and that over 84 percent of PAs already provide services in an urban market. The commenter indicated that dedicating future PAs to the States with the largest per capita of veterans in the U.S., such as California, Texas, and Florida, all of which boast large urban populations, therefore ignores the larger problem that veterans in rural areas are in need of more support. The commenter recommends that VA remove § 17.537(a)(3) because the previous subsection already achieves VA's goal of providing more support to medically underserved facilities without providing an unnecessary limitation.

VA agrees that PAs are needed to serve in medically underserved populations. However, we do not agree that § 17.537(a)(3) provides an unnecessary limitation or that it unfairly favors States that already have adequate PA populations in urban areas. Read in its entirety, proposed § 17.537(a)(3) priority is not limited to the sole factor of veteran population. Rather, it states that VA will give priority to eligible individuals who agree to be employed as physician assistants in a VA medical facility that: (1) Is located in a community that is designated as a medically underserved population as defined by 42 U.S.C. 254b(b)(3)(A); (2) Is designated by VA as a medically underserved facility; and (3) Is in a State with a per capita population of veterans of more than five percent, according to the National Center for Veterans Analysis and Statistics and the United States Census Bureau. Proposed § 17.537(a)(3) is also a requirement established under section 246(d)(2) of the Consolidated Appropriations Act, 2018, which is meant to allow VA to provide health care to a State with a per capita population of veterans of more than five percent, but is not meant to be exclusive of an urban population. All other conditions in § 17.537(a) must also be met, which includes medically underserved communities and VA medical facilities. VA intends to utilize the EACFMAF to expand health care services in VA medical facilities where recruitment and retention of PAs is difficult due to the location of the VA medical facility. In addition, establishing the five percent requirement allows VA to serve a larger number of veterans in communities that would otherwise benefit from increased health care professionals. We are not making any changes based on this comment.

**§ 17.538 Agreement and Obligated Service**

*Obligated service—General.* A commenter stated that if there was not an employment vacancy for a PA at a VA medical facility that is located in the vicinity of the participant's residence within 90 days after the date that the participant completes their education, then the 90 day requirement should be extended to 180 days for such individual.

We stated in proposed § 17.538(b)(1) that the obligated service would begin on the date on which the eligible individual begins full-time permanent employment with VA as a clinical practice employee as a physician assistant, but no later than 90 days after the date that the eligible individual completes a master's degree in physician assistant studies or similar master's degree or the date the eligible individual becomes licensed in a State and certified as required by the Secretary, whichever is later. VA has been successful in placing participants of similar scholarship programs into full-time VA employment within an even shorter 60-day time frame. See 38 CFR 17.607(b). In addition, the participant must be willing to relocate to another geographic location to carry out their service obligation. We are not making any changes based on this comment.

A commenter stated that the fulltime service requirement to begin within 90 days after completion of the PA degree assumes that VA will have full time permanent positions available. The commenter suggested that the requirement should be that an individual will undertake at least 50 percent time employment on a fulltime or temporary basis, in order to give the maximum flexibility to both the individual and the VA. The commenter added that VA hospitals may have limited hiring ability and may not wish to hire full time permanent employees, but could still benefit from having more physician assistants.

VA currently has PA vacancies nationwide, especially in VA medical facility located in communities that are designated as medically underserved under 42 U.S.C. 245b(b)(3)(A) and those VA medical facilities that VA has determined as medically underserved. In addition, VA anticipates the need for PA's will remain, particularly in the medically underserved areas. Under proposed § 17.538(a)(3) a participant agrees to be employed as a full-time clinical practice employee in VA as a physician assistant for a period of obligated service for one calendar year for each school year or part thereof for which the EACFMAF was awarded, but for no less than three years. The full-time employment requirement is also similar to other VA scholarship programs. Reducing the service to anything other than full time would defeat the purpose of the EACFMAF. We are not making any changes based on this comment.

One commenter stated that § 17.538(b)(1) does not provide enough flexibility to account for unforeseeable delays in attaining certification as it does not account for possible extenuating circumstances outside of an individual's control. The commenter added that the COVID–19 pandemic has clearly demonstrated that unforeseen events can arise, which can delay intended plans indefinitely, and that there is arguably a lack of compassion in a provision that can cause an individual to be in breach of their contract when they are not at fault because of major outside influences. The commenter suggests that VA consider extending the length of time before an individual is in breach to one year and revise the consequence of failing to acquire licensure or certification due to unforeseen circumstances by placing the participant under review, subject to breach if the failure was due to the individual's actions.

We stated in the proposed rule that section 246 of the Consolidated Appropriations Act, 2018 does not establish a time frame for when an eligible individual will repay the amount of damages when such eligible individual breaches their terms of agreement, and that proposed § 17.539(b) would mirror the repayment period language from similar scholarship programs. See 38 U.S.C. 7617(c)(2) and 38 CFR 17.610(c). We stated in part in proposed § 17.538(b)(1) that VA will actively assist and monitor eligible individuals to ensure State licenses and certificates are obtained in a minimal amount of time following graduation. We also stated that if an eligible individual fails to obtain his or her degree, or fails to become licensed in a State or become certified no later than 180 days after receiving the degree, the eligible individual is considered to be in breach of the acceptance agreement. Participants of similar VA scholarship programs have been successfully able to obtain the required certification within the 180-day time frame, and we believe that will be the case in EACFMAF as well. However, we are aware that there may be instances where the participant of the EACFMAF may not be able to obtain their certification due to unforeseen circumstances such as the COVID–19 National Emergency. VA's engagement in assisting and monitoring the eligible individuals obtain their State license and certificates will alert VA of any potential unforeseen circumstance. VA will examine these unforeseen circumstances as they arise on a case by case basis and may provide general guidance to all participants if the unforeseen circumstance affects all participants. We are not making any changes based on this comment.

*Location and position of obligated service.* One commenter was in favor of the rule, but stated that more clarity is needed regarding exactly which VA medical facilities are considered to be given preference under the criteria set forth in the rule. The commenter added that the proposed regulation text is vague and subject to changes based on classification of various sites, for which the criteria is unclear.

We agree with the commenter in that the proposed rule did not specify how VA would alert potential participants of VA locations that have vacancies. We, therefore, revise § 17.538(b)(2) as proposed to state that VA will publish a list of VA medical facilities where the participants may perform their period of obligated service in a notice in the **Federal Register** on a yearly basis. Participants of the EACFMAF may select their preference for service from this list to serve the period of obligated service, however, VA reserves the right to make the final decision on location. By providing this list of vacancies, prospective participants will know prior to applying for the program the VA medical facilities that will have vacancies in which the participants of the EACFMAF may perform their period of obligated service.

Several commenters stated that students receiving EACFMAF should, at the very least, have relocation costs reimbursed if their assigned facility is outside the area of their current residence or have the participant agree before their service begins where their term is to be served, and commit via contract. These commenters asserted that these changes would reduce financial hardship for students with families with already limited resources and lessen the burden of a mandated move.

We stated in the proposed rule that VA reserves the right to make final decisions on the location and position of the obligated service. We also stated that an eligible individual who receives an EACFMAF must be willing to relocate to another geographic location to carry out their service obligation. This language is consistent with similar scholarship programs. See 38 CFR 17.607(d). We appreciate that relocation expenses can be burdensome to some applicants. However, paying relocation expenses to a participant of the EACFMAF would reduce the amount of funds available for the program. In addition, Public Law 115–141 section 246 does not give VA specific authority to pay relocation expenses. We are not

making any changes based on this comment.

One commenter disagreed with the statement in the proposed rule's Supplementary Section where VA stated that several branches of the Armed Forces train individuals to perform the duties of a physician assistant without the required educational training. The commenter stated that corpsman and medics are very highly trained and provide exceptional medical care to their fellow servicemembers but they are not trained perform to the duties of a PA, and that the training is extensive but one cannot be called a PA without going through PA school.

We agree with the commenter that being trained in potential PA duties does not equate with being a PA, and that is exactly the function of the EACFMAF, to allow an individual without formal PA training to receive such training. We stated in the proposed rule that the EACFMAF would allow such individuals the opportunity to complete their education and training in order to be employed by VA as a physician assistant. We are not making any changes based on this comment.

**Technical Edit**

We are making one technical edit to *§ 17.536(b)(4). Proposed § 17.536(b)(4) stated that an applicant must submit an application to participate in the Scholarship Program together with a signed contract. We are amending the term* ''*contract*'' *to now state* ''*agreement*'' *to be consistent in the use of the term as stated in § 17.538. We are not making any changes to the meaning of § 17.536(b)(4).*

Based on the rationale set forth in the **SUPPLEMENTARY INFORMATION** to the proposed rule and in this final rule, VA is adopting the proposed rule with the changes described in this final rule.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that VA 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 final rule includes provisions constituting an amendment of an existing collection of information under the Paperwork Reduction Act of 1995 that require approval by the OMB. The existing OMB control number that will be amended by this action is 2900–0793. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections of information it approves. VA 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. Proposed 38 CFR 17.538 contains a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection of information as requested, VA will immediately remove the provision containing a collection of information or take such other action as is directed by OMB.

The amended proposed collection of information is comprised of an agreement between VA and the eligible individual who accepts funding for the Educational Assistance for Certain Former Members of the Armed Forces (EACFMAF).

VA estimates there will be 100 veteran applicants per year, which will require them to complete an application package. This application package is comprised of the application itself, academic verification, evaluation & recommendation, and an addendum to the application. VA estimates it will take an applicant 3.7 hours to complete the application package, for a total PRA cost of $10,061.02 (100 applicants × 3.7 hrs. × $27.07 [1]).

Additionally, there will be further collections for applicants selected for the program. VA intends to select 25 Veterans for the scholarship each year. Those selected to receive the scholarship will be required to fill out agreements for the scholarship, a mobility agreement, an offer response, notice of change/annual academic report, notice of approaching graduation, education program completion, request for deferment for advanced education, and an annual VA employment/deferment verification. VA estimates it will take 1.75 hours to complete the acceptance package, for a total PRA cost of $ 1,184.31 (25 applicants × 1.75 hrs. × $27.07 [2]). VA estimates the total annual burden cost to all respondents to be $11,245.33 ($10,061.02 for the application + $1,184.31 acceptance package).

[1] For the proposed collection of information, VA used general wage data from the May 2020 Bureau of Labor Statistics (BLS) website, *https://www.bls.gov/oes/current/oes_nat.htm,* VA used the BLS wage code of ''00–0000 All Occupations, which has a mean hourly wage/salary workers of $27.07.

[2] For the proposed collection of information, VA used general wage data from the May 2020 Bureau of Labor Statistics (BLS) website, *https://www.bls.gov/oes/current/oes_nat.htm,* VA used the BLS wage code of ''00–0000 All Occupations, which has a mean hourly wage/salary workers of $27.07.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rulemaking does not change VA's policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the final rule will not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Congressional Review Act**

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

**Catalog of Federal Domestic Assistance**

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

**List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Health care, Health facilities, Health professions, Scholarships and fellowships.

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved this document on October 4, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Consuela Benjamin,**

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons set forth in the preamble, we are amending 38 CFR part 17 as follows:

## PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Sections 17.535 through 17.539 are also issued under Public Law 115–141, sec. 246.

* * * * *

■ 2. Add an undesignated center heading and §§ 17.535 through 17.539 immediately following § 17.531 to read as follows.

Sec.

* * * * *

*Educational Assistance for Certain Former Members of the Armed Forces*

17.535 Purpose.
17.536 Eligibility.
17.537 Award procedures.
17.538 Agreement and obligated service.
17.539 Failure to comply with terms and conditions of agreement.

* * * * *

**§ 17.535 Purpose.**

The purpose of §§ 17.535 through 17.539 is to establish the Educational Assistance for Certain Former Members of the Armed Forces (EACFMAF). The EACFMAF will provide a scholarship to certain former members of the Armed Forces for the education and training leading to employment as a VA physician assistant.

**§ 17.536 Eligibility.**

(a) *Military and Training requirements.* An individual is eligible to participate in the EACFMAF if such individual is a former member of the Armed Forces who was discharged or released therefrom under conditions other than dishonorable and meets one of the following criteria:

(1) Has medical or military health experience gained while serving as a member of the Armed Forces;

(2) Has received a certificate, associate degree, baccalaureate degree, master's degree, or post baccalaureate training in a science relating to health care; or

(3) Has participated in the delivery of health care services or related medical services, including participation in military training relating to the identification, evaluation, treatment, and prevention of disease and disorders.

(b) *School and Individual requirements.* To be eligible for the EACFMAF, an applicant must:

(1) Be unconditionally accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State;

(2) Be pursuing a degree leading to employment as a physician assistant;

(3) Be a citizen of the United States; and

(4) Submit an application to participate in the Scholarship Program together with a signed agreement as specified in *§ 17.538.*

**§ 17.537 Award procedures.**

(a) *Priority.* In awarding EACFMAF, VA will give priority to eligible individuals who agree to be employed as physician assistants in a VA medical facility that:

(1) Is located in a community that is designated as a medically underserved population under 42 U.S.C. 254b(b)(3)(A);

(2) Is designated by VA as a medically underserved facility; and

(3) Is in a State with a per capita population of veterans of more than five percent, according to the National Center for Veterans Analysis and Statistics and the United States Census Bureau.

(b) *Amount of funds.* VA will provide a scholarship to individuals who participate in the EACFMAF to cover the costs of such individuals obtaining a master's degree in physician assistant studies or similar master's degree for a period of one to three years. All such payments to scholarship participants are exempt from Federal taxation. The payments will consist of:

(1) Tuition and required fees;

(2) Other educational expenses, including books and laboratory equipment.

**§ 17.538 Agreement and obligated service.**

(a) *Agreement.* Each eligible individual who accepts funds from the EACFMAF will enter into an agreement with VA where the eligible individual agrees to the following:

(1) Maintain enrollment, attendance, and acceptable level of academic standing as defined by the school;

(2) Complete a master's degree in physician assistant studies or similar master's degree; and

(3) Be employed as a full-time clinical practice employee in VA as a physician assistant for a period of obligated service for one calendar year for each school year or part thereof for which the EACFMAF was awarded, but for no less than three years.

(b) *Obligated service*—(1) *General.* An eligible individual's obligated service will begin on the date on which the eligible individual begins full-time permanent employment with VA as a clinical practice employee as a physician assistant, but no later than 90 days after the date that the eligible individual completes a master's degree in physician assistant studies or similar master's degree, or the date the eligible individual becomes licensed in a State and certified as required by the Secretary, whichever is later. VA will actively assist and monitor eligible individuals to ensure State licenses and certificates are obtained in a minimal amount of time following graduation. If an eligible individual fails to obtain his or her degree, or fails to become licensed in a State or become certified no later than 180 days after receiving the degree, the eligible individual is considered to be in breach of the acceptance agreement.

(2) *Location and position of obligated service.* VA will publish a list of VA medical facilities where the participants may perform their period of obligated service in a notice in the **Federal Register** on a yearly basis. Participants of the EACFMAF may select their preference for service from this list to serve the period of obligated service. VA reserves the right to make final decisions on the location and position of the obligated service. An eligible individual who receives an EACFMAF must be willing to relocate to another geographic location to carry out their service obligation.

(The Office of Management and Budget has approved the information collection

requirements in this section under control number 2900–0793.)

**§ 17.539 Failure to comply with terms and conditions of agreement.**

(a) *Participant fails to satisfy terms of agreement.* If an eligible individual who accepts funding for the EACFMAF fails to satisfy the terms of agreement, the United States is entitled to recover damages in an amount equal to the total amount of EACFMAF funding paid or is payable to or on behalf of the individual, reduced by the total number of obligated service days the individual has already served minus the total number of days in the individual's period of obligated service.

(b) *Repayment period.* The eligible individual will pay the amount of damages that the United States is entitled to recover under this section in full to the United States no later than one year after the date of the breach of the agreement.

[FR Doc. 2021–22131 Filed 10–8–21; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2017–0335; FRL–9000–01–OCSPP]**

## Pseudomonas Fluorescens Strain ACK55; Exemption From the Requirement of a Tolerance; Technical Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** EPA issued a final rule in the **Federal Register** of September 28, 2020, establishing an exemption from the requirement of a tolerance for residues of pseudomonas fluorescens strain ACK55 in or on all food commodities when used in accordance with label directions and good agricultural practices. This exemption was requested by the IR–4 Project under the Federal Food, Drug, and Cosmetic Act (FFDCA). That document identified a codified section that had already been assigned in another final rule that was issued in the **Federal Register** of September 25, 2020. This document corrects the final regulation by identifying a new codified section.

**DATES:** This final rule correction is effective October 12, 2021.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0335, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Charles Smith, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Does this action apply to me?

A list of potentially affected entities is included in the final rule issued in the **Federal Register** of September 28, 2020 (85 FR 60716) (FRL–10013–27).

### II. What does this technical correction do?

EPA issued a final rule in the **Federal Register** of September 28, 2020 (85 FR 60716) (FRL–10013–27) that established an exemption from the requirement of a tolerance for residues of pseudomonas fluorescens strain ACK55 in or on all food commodities when used in accordance with label directions and good agricultural practices. While establishing this exemption from the requirement of a tolerance in response to a petition from the IR–4 Project, EPA inadvertently identified a codified section that had already been assigned in another final rule that was issued in the **Federal Register** of September 25, 2020 (85 FR 60366) (FRL–10013–33). Unable to use the codified number identified by EPA in the final rule issued in the **Federal Register** of September 28, 2020, the Code of Federal Regulations (CFR) was revised to include the following text:

**Editorial Note:** At 85 FR 60718, Sept. 28, 2020, a second § 180.1379 was added; however, the amendment could not be incorporated because the section already exists.

Therefore, with this final rule, EPA is identifying 40 CFR 180.1380 as the codified section for the exemption from the requirement of a tolerance for residues of pseudomonas fluorescens strain ACK55 in or on all food commodities when used in accordance with label directions and good agricultural practices that was established in the final rule issued in the **Federal Register** of September 28, 2020 (85 FR 60716) (FRL–10013–27).

### III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because EPA inadvertently duplicated an existing codified section. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

### IV. Do any of the statutory and executive order reviews apply to this action?

No. For a detailed discussion concerning the statutory and executive order review, refer to Unit IV. in the final rule of the September 28, 2020.

### V. Congressional Review Act (CRA)

Pursuant to the CRA (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 2021.

**Edward Messina,**

*Director, Office of Pesticide Programs.*

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

## PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In subpart D, add § 180.1380 to read as follows:

**§ 180.1380 Pseudomonas fluorescens strain ACK55; exemption from the requirement of a tolerance.**

Residues of Pseudomonas fluorescens strain ACK55 are exempt from the requirement of a tolerance in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2021–22105 Filed 10–8–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**EPA–HQ–OPP–2020–0511; FRL–8667–01–OCSPP]**

### Clothianidin; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of the insecticide clothianidin in or on food and feed commodities (other than those covered by a higher tolerance) in food/feed handling establishments. McLaughlin Gormley King Company D/B/A MGK requested tolerances for these commodities under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective October 12, 2021. Objections and requests for hearings must be received on or before December 13, 2021 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0511, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets*.

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Acting Director, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0511 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before December 13, 2021. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although at this time, EPA strongly encourages those interested in submitting objections or a hearing request, to submit objections and hearing requests electronically. *See* Order Urging Electronic Service and Filing (April 10, 2020), *https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf*. At this time, because of the COVID–19 pandemic, the judges and staff of the Office of Administrative Law Judges are working remotely and not able to accept filings or correspondence by courier, personal deliver, or commercial delivery, and the ability to receive filings or correspondence by U.S. Mail is similarly limited. When submitting documents to the U.S. EPA Office of Administrative Law Judges (OALJ), a person should utilize the OALJ e-filing system, at *https://yosemite.epa.gov/OA/EAB/EAB-ALJ_upload.nsf*.

Although EPA's regulations require submission via U.S. Mail or hand deliver, EPA intends to treat submissions filed via electronic means as properly filed submissions during this time that the Agency continues to maximize telework due to the pandemic; therefore, EPA believes the preference for submission via electronic means will not be prejudicial. If it is impossible for a person to submit documents electronically or receive service electronically, *e.g.,* the person does not have any access to a computer, the person shall so advise OALJ by contacting the Hearing Clerk at (202) 564–6281. If a person is without access to a computer and must file documents by U.S. Mail, the person shall notify the Hearing Clerk every time it files a document in such a manner. The address for mailing documents is U.S. Environmental Protection Agency, Office of Administrative Law Judges, Mail Code 1900R, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–

2020–0511, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 27, 2020 (85 FR 68030) (FRL–10015–86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F8869) by McLaughlin Gormley King Company D/B/A MGK, 7325 Aspen Lane N, Minneapolis, MN 55428. The petition requested that 40 CFR 180.586(a)(1) be amended by establishing tolerances for residues of the insecticide clothianidin, (*E*)-*N*-[(2-Chloro-5-thiazolyl)methyl]-*N*′-methyl-*N*″-nitroguanidine, in or on all food items in food handling establishments where food and food products are held, processed, prepared, and/or served at 0.01 parts per million (ppm). That document referenced a summary of the petition prepared by McLaughlin Gormley King Company D/B/A MGK, the registrant, which is available in the docket, *http://www.regulations.gov*. There was one, non-substantive comment received on November 8, 2020, in response to the notice of filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing tolerances that vary from what the petitioners sought. The reasons for these changes are explained in detail in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D) and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for clothianidin in or on food and feed commodities (other than those covered by a higher tolerance).

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings and republishing the same sections is unnecessary; EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has recently published a tolerance rulemaking for clothianidin, in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to clothianidin and established tolerances for residues of that chemical. EPA is incorporating previously published sections from those rulemakings as described further in this rulemaking, as they remain unchanged.

*Toxicological Profile.* For a discussion of the Toxicological Profile of clothianidin, see Unit III.A. of the November 25, 2019 rulemaking (84 FR 64772) (FRL–10000–64).

*Toxicological Points of Departure/Levels of Concern.* A summary of the toxicological effects of clothianidin, including the specific information on the studies received, the nature of the adverse effects caused by clothianidin, the no observed adverse effects level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document entitled ''Clothianidin: Draft Human Health Risk Assessment in Support of Registration Review,'' dated September 7, 2017. This document can be found in docket ID number EPA–HQ–OPP–2011–0865.

*Exposure Assessment.* EPA has updated the exposure assessments of clothianidin to include the petitioned-for tolerances in addition to exposures associated with existing tolerances for clothianidin in 40 CFR 180.586. The acute and chronic dietary exposure assessments for clothianidin were conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database DEEM–FCID™, Version 3.16, which incorporates consumption data from USDA's National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008.

The acute dietary exposure assessment is based on tolerance-level residues for all commodities since EPA typically does not include FHE uses in acute dietary assessments. In addition, the acute dietary exposure assessment assumes 100% crop treated (PCT) and incorporates the modeled EDWCs. Therefore, the resulting exposure and risk estimates are conservative.

The partially refined chronic dietary exposure assessment is based on average field trial residues and assumes 100 PCT. Average residues from representative commodities were extrapolated to similar commodities. Because thiamethoxam, which also breaks down into clothianidin residues, is also registered for FHE use, EPA accounts for clothianidin residues from both thiamethoxam and clothianidin FHE uses in the chronic assessment. For these analyses, a residue input value for FHE use was entered for all other commodities in DEEM–FCID™ not registered for direct use. Default processing factors were used, except where empirical factors derived from processing studies were available.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years

after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

EPA also used the same estimates for potential drinking water exposures as reflected in the November 25, 2019, rulemaking. Since the proposed use is for indoor applications, a new drinking water assessment was not needed.

Clothianidin is registered for uses that may result in residential (non-occupational) exposures. EPA has assessed the potential for short-term post-application exposure; other exposures are not expected. No residential risks of concern were identified. For aggregate risk assessment, EPA used the risk estimates from the combined dermal and inhalation exposures for adults from indoor aerosol can usage and from the combined dermal, inhalation, and incidental oral exposures for children 1 to less than 2 years old from treated indoor surfaces.

*Safety Factor for Infants and Children.* Section 408(b)(2)(C) of the FFDCA provides that EPA shall apply an additional tenfold (10x) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10 times, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

EPA determined reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x because: (1) The toxicology data base is complete and includes developmental neurotoxicity (DNT), adult immunotoxicity and developmental immunotoxicity studies; (2) EPA characterized the degree of concern for the quantitative susceptibility observed in the clothianidin 2-generation reproduction and DNT studies as low based on the clear NOAELs for the offspring effects and the selection of regulatory doses that are protective of those effects; (3) the rat is the most sensitive species tested, and the NOAEL and LOAEL selected from the two-generation reproduction study in rats are protective of effects observed in the toxicology database, including the DNT and developmental immunotoxicity studies; (4) there are no residual uncertainties for pre- and/or post-natal toxicity; (5) EPA is regulating the use of clothianidin based upon the most sensitive offspring effects observed in the reproduction toxicity study, and therefore the risk assessment is protective of these and other effects that occurred at higher doses; (6) the exposure databases (*e.g.,* dietary food, drinking water, and residential) are complete; and (7) the risk assessment for each potential exposure scenario does not underestimate potential exposure and risk for infants or children.

*Aggregate Risks and Determination of Safety.* EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic PAD (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure (PODs) to ensure that an adequate margin of exposure (MOE) exists. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure.

The acute dietary risk estimates for clothianidin are 9.5% of the aPAD for the U.S. general population, and 29% of the aPAD for children 1 to 2 years old (the most highly exposed population subgroup). The chronic dietary risk estimates are 3.9% of the cPAD for the U.S. general population, and 9.4% of the cPAD for infants less than 1-year old (the most highly exposed population subgroup). Because both are below the 100% of the relevant PAD, these risk estimates are not of concern.

The short-term aggregate risk assessments resulted in MOEs of 150 to 490. For clothianidin, the LOC for short-term risk is an MOE of 100. As the resulting aggregate MOEs exceed the LOC of 100, short-term aggregate risk estimates are not of concern. Intermediate-term and long-term residential exposures are not expected.

Clothianidin is classified as ''Not Likely to be Carcinogenic to Humans;'' therefore, cancer risk is not a concern and cancer risks are not quantified.

Based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the U.S. general population, or to infants and children, from aggregate exposure to clothianidin residues. More detailed information on the subject action to establish a tolerance in or on food and feed commodities (other than those covered by a higher tolerance) can be found at *http://www.regulations.gov* in the document entitled ''Clothianidin. Petition for the Establishment of Permanent Tolerances and Registration for Use in Food Handling Establishment,'' dated July 15, 2021. This document can be found in docket ID number EPA–HQ–OPP–2020–0511.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate Liquid Chromatograph/Mass Spectrometer/Mass Spectrometer (LC/MS/MS) methods are available for enforcing tolerances of clothianidin residues in/on crop (Morse Method #Meth-164—modified, RM–39C–1, or Bayer Method 00552) and livestock (Bayer Method 00624) matrices.

These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Road, Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). Codex is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. Although EPA may establish a tolerance that is different from a Codex MRL, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex has not established MRLs for food commodities based on the petitioned-for use in food handling establishments.

### *C. Revisions to Petitioned-For Tolerances*

The petition described the use of clothianidin in or on ''all food items in food handling establishments where food and food products are held, processed, prepared and/or served.''

EPA has revised this language for the requested tolerance to read ''Food and feed commodities (other than those covered by a higher tolerance) in food/feed handling establishments.''

## V. Conclusion

Tolerances are established for residues of the insecticide clothianidin in or on food and feed commodities (other than those covered by a higher tolerance) at 0.01 ppm.

## VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

## VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 5, 2021.

**Marietta Echeverria,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

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

## PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.586, amend paragraph (a)(1) by

■ a. Designating the table as table 1; and

■ b. In newly redesignated table 1, adding in alphabetical order an entry for ''Food and feed commodities (other than those covered by a higher tolerance) in food/feed handling establishments''.

The additions read as follows:

### § 180.586 Clothianidin; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

| Commodity | Parts per million |
|---|---|
| * * * * * * * | |
| Food and feed commodities (other than those covered by a higher tolerance) in food/feed handling establishments | 0.01 |
| * * * * * * * | |

* * * * *

[FR Doc. 2021–22104 Filed 10–8–21; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 210513–0105; RTID 0648–XB444]**

## Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Mid-Atlantic Scallop Access Area to General Category Individual Fishing Quota Scallop Vessels

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the Mid-Atlantic Scallop Access Area is closed to Limited Access General Category Individual Fishing Quota scallop vessels for the remainder of the 2021 fishing year. No vessel issued a Limited Access General Category Individual Fishing Quota permit may fish for, possess, or land scallops from the Mid-Atlantic Scallop Access Area. Regulations require this action once it is projected that 100 percent of trips allocated to the Limited Access General Category Individual Fishing Quota scallop vessels for the Mid-Atlantic Scallop Access Area will be taken.

**DATES:** Effective 0001 hr local time, October 7, 2021, through March 31, 2022.

**FOR FURTHER INFORMATION CONTACT:** Louis Forristall, Fishery Management Specialist, (978) 281–9321.

**SUPPLEMENTARY INFORMATION:** Regulations governing fishing activity in the Sea Scallop Access Areas can be found in 50 CFR 648.59 and 648.60. These regulations authorize vessels issued a valid Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) scallop permit to fish in the Mid-Atlantic Scallop Access Area under specific conditions, including a total of 571 trips that may be taken during the 2021 fishing year. Section 648.59(g)(3)(iii) requires the Mid-Atlantic Scallop Access Area to be closed to LAGC IFQ permitted vessels for the remainder of the fishing year once the NMFS Greater Atlantic Regional Administrator determines that the allocated number of trips for fishing year 2021 are projected to be taken.

Based on trip declarations by LAGC IFQ scallop vessels fishing in the Mid-Atlantic Scallop Access Area, analysis of fishing effort, and other information, NMFS projects that 571 trips will be taken as of October 7, 2021. Therefore, in accordance with § 648.59(g)(3)(iii), NMFS is closing the Mid-Atlantic Scallop Access Area to all LAGC IFQ scallop vessels as of October 7, 2021. No vessel issued an LAGC IFQ permit may fish for, possess, or land scallops in or from the Mid-Atlantic Scallop Access Area after 0001 hr local time, October 7, 2021. Any LAGC IFQ vessel that has declared into the Mid-Atlantic Access Area scallop fishery, complied with all trip notification and observer requirements, and crossed the vessel monitoring system (VMS) demarcation line on the way to the area before 0001 hr, October 7, 2021, may complete its trip without being subject to this closure. This closure is in effect for the remainder of the 2021 scallop fishing year, through March 31, 2022.

### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 648, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The Mid-Atlantic Scallop Access Area opened for the 2021 fishing year on April 1, 2021. The regulations at § 648.59(g)(3)(iii) require this closure to ensure that LAGC IFQ scallop vessels do not take more than their allocated number of trips in the area. The projected date on which the LAGC IFQ fleet will have taken all of its allocated trips in an Access Area becomes apparent only as trips into the area occur on a real-time basis and as activity trends begin to appear. As a result, NMFS can only make an accurate projection very close in time to when the fleet has taken all of its trips. To allow LAGC IFQ scallop vessels to continue to take trips in the Mid-Atlantic Scallop Access Area during the period necessary to publish and receive comments on a proposed rule would likely result in the vessels taking much more than the allowed number of trips in the Mid-Atlantic Scallop Access Area. Excessive trips and harvest from the Mid-Atlantic Scallop Access Area would result in excessive fishing effort in the area, where effort controls are critical, thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures. Also, the public had prior notice and full opportunity to comment on this closure process when it was enacted. For these same reasons, NMFS further finds, under 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period.

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

Dated: October 6, 2021.

**Jennifer M. Wallace,**

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

[FR Doc. 2021–22139 Filed 10–6–21; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 86, No. 194
Tuesday, October 12, 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 TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0875; Project Identifier AD–2021–00675–E]**

**RIN 2120–AA64**

## Airworthiness Directives; Continental Aerospace Technologies, Inc. and Continental Motors Reciprocating Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Continental Aerospace Technologies, Inc. C–125, C145, IO–360, IO–470, IO–550, O–300, O–470, TSIO–360, TSIO–520 series model reciprocating engines and certain Continental Motors IO–520 series model reciprocating engines with a certain oil filter adapter installed. This proposed AD was prompted by reports of two accidents that were the result of power loss due to oil starvation. This proposed AD would require removal of the oil filter adapter fiber gasket and its replacement with a copper gasket. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by November 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 service information identified in this NPRM, contact Stratus Tool Technologies, LLC, 2208 Air Park Drive, Burlington, NC 27215; phone: (800) 822–3200; website: *https://www.tempestplus.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.

### Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0875; 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:** George Hanlin, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5584; fax: (404) 474–5605; email: *george.hanlin@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–2021–0875; Project Identifier AD–2021–00675–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 George Hanlin, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337. 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 reports of two accidents that were the result of power loss due to oil starvation. The first was a fatal accident on May 1, 2019 involving a Cessna 182P airplane with a Continental Motors O–470–S engine in Mill Creek, California. National Transportation Safety Board (NTSB) preliminary accident investigation report, docket number WPR19FA126, identified evidence of improperly maintained or installed oil filter adapters. An improperly maintained or installed oil filter adapter may lead to failure of the fiber gasket, which may result in oil loss or oil starvation. Based on the investigation, the manufacturer determined the need to replace the fiber gasket with a copper gasket. This condition, if not addressed, could result in failure of the engine, in-flight shutdown, and loss of control of the aircraft.

### FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or

develop on other products of the same type design.

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

The FAA reviewed Stratus Tool Technologies Mandatory Service Bulletin (MSB) SB–001 Rev B, dated June 17, 2021. This MSB specifies procedures for removing a fiber gasket and replacing it with a copper gasket. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

**Proposed AD Requirements in This NPRM**

This proposed AD would require removal of the fiber gasket and replacement with a copper gasket.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 6,300 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Replace fiber gaskets with copper gaskets .... | 2.5 work-hours × $85 per hour = $212.50 ..... | $34 | $246.50 | $1,552,950 |

**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:

**Continental Aerospace Technologies, Inc. and Continental Motors:** Docket No. FAA–2021–0875; Project Identifier AD–2021–00675–E.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by November 26, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the reciprocating engine models identified in paragraphs (c)(1) and (2) of this AD with an F&M Enterprises, Inc. (F&M) or Stratus Tool Technologies, LLC (Stratus) oil filter adapter installed per Supplemental Type Certificate SE8409SW, SE09356SC or SE10348SC.

(1) Continental Aerospace Technologies, Inc. (Type Certificate previously held by Continental Motors, Inc., and Teledyne Continental Motors) C–125–1, C–125–2, C145–2, C145–2H, IO–360–C, IO–360–D, IO–360–DB, IO–360–H, IO–360–HB, IO–360–K, IO–360–KB, IO–470–E, IO–470–S, IO–550–B, IO–550–G, O–300–B, O–300–C, O–300–D, O–300–E, O–470–A, O–470–B, O–470–G, O–470–J, O–470–K, O–470–L, O–470–M, O–470–N, O–470–R, O–470–S, O–470–U O–470–11, O–470–15, TSIO–360–E, TSIO–360–EB, TSIO–360–F, TSIO–360–FB, TSIO–360–GB, TSIO–360–LB, TSIO–360–MB, TSIO–360–SB, TSIO–520–C, TSIO–520–CE, TSIO–520–E, and TSIO–520–UB model reciprocating engines, and

(2) Continental Motors (Type Certificate previously held by Teledyne Continental Motors) IO–520–A, IO–520–B, IO–520–BA, IO–520–BB, IO–520–C, IO–520–D, IO–520–J, and IO–520–L model reciprocating engines.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 8550, Reciprocating Engine Oil System.

**(e) Unsafe Condition**

This AD was prompted by reports of two accidents that were the result of power loss due to oil starvation. The FAA is issuing this AD to prevent loss of engine power. The unsafe condition, if not addressed, could result in failure of the engine, in-flight shutdown, and loss of control of the aircraft.

**(f) Compliance**

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

**(g) Required Actions**

Before accumulating 50 flight hours after the effective date of this AD or at the next scheduled oil change after the effective date of this AD, whichever occurs first, remove any F&M or Stratus oil filter adapter fiber gasket from service and replace it with a Stratus AN900–28 or AN900–29 oil filter adapter copper gasket in accordance with the Compliance Instructions, paragraph 6., pages 7 through 10 (including all detailed instructions for Figure 5 through Figure 16), of Stratus Tool Technologies Mandatory Service Bulletin SB–001 Rev B, dated June 17, 2021.

**(h) Installation Prohibition**

After the effective date of this AD, do not install or reuse an F&M or Stratus fiber gasket in any F&M or Stratus Tool Technologies oil filter adapter.

**(i) Special Flight Permit**

Special flight permits, as described in 14 CFR 21.197 and 21.199, are subject to the requirements of paragraph (i)(1) of this AD:

(1) Operators may perform a one-time non-revenue ferry flight to operate the airplane to a location where the maintenance action can be performed.

(2) [Reserved]

**(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 paragraph (k)(1) of this AD.

(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**

(1) For more information about this AD, contact George Hanlin, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5584; fax: (404) 474–5605; email: *george.hanlin@faa.gov.*

(2) For service information identified in this AD, contact Stratus Tool Technologies, LLC, 2208 Air Park Drive, Burlington, NC 27215; phone: (800) 822–3200; website: *https://www.tempestplus.com.* You may view this referenced 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.

Issued on October 5, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021–22095 Filed 10–8–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2021–0874; Project Identifier AD–2021–00668–E]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Corporation (Type Certificate Previously Held by Allison Engine Company) Turboprop Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Rolls-Royce Corporation (RRC) AE 2100D3 model turboprop engines. This proposed AD was prompted by an in-flight shutdown (IFSD) of an engine and subsequent investigation by the manufacturer that revealed a crack in the 3rd-stage compressor wheel. This proposed AD would require replacement of the affected 3rd-stage compressor wheel. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by November 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 service information identified in this NPRM, contact Rolls-Royce Corporation, 450 South Meridian Street, Mail Code NB–01–06, Indianapolis, IN 46225; phone: (317) 230–1667; email: *CMSEindyOSD@rolls-royce.com;* website: *www.rolls-royce.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.

**Examining the AD Docket**

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0874; 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:** Kyri Zaroyiannis, Aviation Safety Engineer, Chicago ACO, FAA, 2300 E Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–7836; fax: (847) 294–7834; email: *kyri.zaroyiannis@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–2021–0874; Project Identifier AD–2021–00668–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Kyri Zaroyiannis, Aviation Safety Engineer, Chicago ACO, FAA, 2300 E Devon Avenue, Des Plaines, IL 60018. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

**Background**

The FAA was notified of an uncommanded IFSD of a RRC AE 3007A1 model turbofan engine installed on an Embraer S.A. model EMB–145 airplane (marketed as ERJ–145), while conducting a revenue flight. The manufacturer's investigation of this incident revealed that the IFSD resulted

from a low-cycle fatigue crack in the dovetail slot for the blade attachment in the 3rd-stage compressor wheel, causing one 3rd-stage compressor blade to release. The crack initiated in the dovetail slot due to a sharp corner in the wheel slot geometry. The broaching process was identified as the cause of the crack and parts from this manufacturing lot required removal from service.

In response to this event and the manufacturer's subsequent investigation, the FAA issued a final rule; request for comments, AD 2020–16–13 (85 FR 45769, July 30, 2020), requiring replacement of certain 3rd-stage compressor wheels installed on RRC AE 3007A, AE 3007A1, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1E, AE 3007A1P, and AE 3007A3 model turbofan engines before the 3rd-stage compressor wheels accumulate a specified number of cycles. The actions required by AD 2020–16–13 address engines that experienced high stresses at the 3rd stage compressor wheel location and accumulated cycles at a high rate. The FAA now proposes to require removal of certain AE 2100D3 3rd-stage compressor wheels that were produced in the same lot as the AE 3007 3rd-stage compressor wheels identified in AE 2020–16–13, before they accumulate a specified number of cycles. This condition, if not addressed, could result in uncontained release of the 3rd-stage compressor wheel, damage to the engine, and damage to the airplane.

**FAA's Determination**

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

**Related Service Information**

The FAA reviewed Rolls-Royce Alert Service Bulletin (ASB) AE 2100D3–A–72–330, Engine—3rd Stage Compressor Wheel Removal for Reduced Life Limit, dated June 11, 2021. The ASB specifies procedures for removal of a certain 3rd-stage compressor wheel.

**Proposed AD Requirements in This NPRM**

This proposed AD would require replacement of a certain 3rd-stage compressor wheel before it accumulates a specified number of cycles.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 15 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Remove and replace 3rd-stage compressor wheel. | 125 work-hours × $85 per hour = $10,625 .... | $32,844 | $43,469 | $652,035 |

**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:

**Rolls-Royce Corporation (Type Certificate previously held by Allison Engine Company):** Docket No. FAA–2021–0874; Project Identifier AD–2021–00668–E.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by November 26, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Rolls-Royce Corporation (RRC) AE 2100D3 model turboprop engines with a 3rd-stage compressor wheel, part number (P/N) 23084158, and with a serial number listed in Figure 1 to paragraph (c) of this AD.

**Figure 1 to Paragraph (c) – Serial Numbers of Affected P/N 23084158 3rd-stage Compressor Wheels**

| | | | |
|---|---|---|---|
| L343502 | L343539 | L343545 | L343546 |
| L343547 | L343550 | L343553 | L343554 |
| L343555 | L343566 | L343569 | L343573 |
| L343576 | L343578 | L343579 | L343580 |
| L343584 | L343588 | L343593 | L343594 |
| L343597 | L343602 | | |

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

**(e) Unsafe Condition**

This AD was prompted by an in-flight shutdown of an engine during a revenue flight and subsequent investigation by the manufacturer that revealed a crack in the 3rd-stage compressor wheel. The FAA is issuing this AD to prevent failure of the 3rd-stage compressor wheel. The unsafe condition, if not addressed, could result in an uncontained release of the 3rd-stage compressor wheel, 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 affected 3rd-stage compressor wheel exceeds 5,200 flight cycles since new, remove the affected 3rd-stage compressor wheel and replace with a part eligible for installation.

**(h) Definition**

For the purpose of this AD, a part eligible for installation is a 3rd-stage compressor wheel that does not have a P/N and a serial number listed in the Applicability, paragraph (c) of this AD.

**(i) Special Flight Permit**

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to permit a one-time, non-revenue ferry flight to a location where the engine can be removed from service. This ferry flight must be performed with only essential flight crew.

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

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

(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 Kyri Zaroyiannis, Aviation Safety Engineer, Chicago ACO, FAA, 2300 E Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–7836; fax: (847) 294–7834; email: *kyri.zaroyiannis@faa.gov*.

Issued on October 5, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021–22091 Filed 10–8–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2021–0815; Airspace Docket No. 21–ASW–17]**

**RIN 2120–AA66**

## Proposed Amendment Class E Airspace; Hereford, TX

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend the Class E airspace at Hereford, TX. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Hereford non-directional beacon (NDB). The geographic coordinates of Hereford Municipal Airport, Hereford, TX, would also be updated to coincide with the FAA's aeronautical database.

**DATES:** Comments must be received on or before November 26, 2021.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0815/Airspace Docket No. 21–ASW–17, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Hereford Municipal Airport, Hereford, TX, to support instrument flight rule operations at this airport.

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0815/Airspace Docket No. 21–ASW–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

**Availability and Summary of Documents for Incorporation by Reference**

This document proposes to amend FAA JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (increased from a 6.6-mile) radius of Hereford Municipal Airport, Hereford, TX; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

These actions are the result of an airspace review caused by the decommissioning of the Hereford NDB which provided guidance to instrument procedures at this airport.

Class E airspace designations are published in paragraph 6005 of FAA JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

**71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

**ASW TX E5 Hereford, TX [Amended]**

Hereford Municipal Airport, TX

(Lat. 34°51′39″ N, long. 102°19′33″ W)

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

Issued in Fort Worth, Texas, on October 5, 2021.

**Steven Phillips,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2021–22078 Filed 10–8–21; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

**[EPA–HQ–OPPT–2021–0220; FRL–8804–01–OCSPP]**

**RIN 2070–AB27**

## Significant New Use Rules on Certain Chemical Substances (21–1.F)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs). The chemical substances received ''not likely to present an unreasonable risk'' determinations under TSCA. The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is proposed as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use, under the conditions of use for that chemical substance, within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

**DATES:** Comments must be received on or before November 12, 2021.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0220, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

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

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA, which would include the SNUR requirements should these proposed rules be finalized. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20 any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after November 12, 2021 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

### II. Background

*A. What action is the Agency taking?*

EPA is proposing these SNURs under TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) for chemical substances that were the subject of PMNs. These proposed SNURs would require persons to notify EPA at least 90 days before commencing the manufacture or processing of any of these chemical substances for an activity proposed as a significant new use. Receipt of such notices would allow EPA to assess risks and, if appropriate, to regulate the significant new use before it may occur.

The docket for these proposed SNURs, identified as docket ID number EPA–HQ–OPPT–2021–0220, includes information considered by the Agency in developing these proposed SNURs.

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

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

*C. Applicability of General Provisions*

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the

rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same significant new use notice (SNUN) requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). These requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN and before the manufacture or processing for the significant new use can commence, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

## III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, potential human exposures and environmental releases that may be associated with possible uses of these chemical substances, in the context of the four TSCA section 5(a)(2) factors listed in this unit.

The proposed rules include PMN substances that EPA has determined ''not likely'' to present an unreasonable risk under the conditions of use, EPA is proposing to identify other circumstances that, while not reasonably foreseen, would warrant further EPA review before manufacture or processing for such a use is commenced.

## IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for certain chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance that is identified in this unit as subject to this proposed rule:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Potentially Useful Information.
- CFR citation assigned in the regulatory text section of the proposed rule.

The chemicals subject to these proposed SNURs are as follows:

*PMN Number: P–16–420*

*Chemical Name:* Dimethyl cyclohexenyl propanol (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the use of the PMN substance will be as a fragrance ingredient, being blended (mixed) with other fragrance ingredients to make fragrance oils that will be sold to industrial and commercial customers for their incorporation into soaps, detergents, cleaners and other similar household and consumer products. Based on the estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and submitted test data on the PMN substance, EPA has identified concerns for eye irritation, systemic toxicity, and aquatic toxicity if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- No release of the PMN substance resulting in surface water concentrations that exceed 55 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11604.

*PMN Number: P–16–446*

*Chemical Name:* Fatty acids, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle, fatty acid and alkylamine, lactates (salts) (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the use of the PMN substance will be as a resin in architectural primer coatings. Based on the estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for irritation to all tissues and aquatic toxicity if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- No release of the PMN substance resulting in surface water concentrations that exceed 38 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11605.

*PMN Number: P–16–602*

*Chemical Name:* Carbonic acid, dialkyl ester, polymers with 5-amino-1,3,3-trimethylcycloalkanemethanamine, 2-ethyl-1-alcohol-blocked 1,6-diisocyanatoalkane homopolymer and 1,6-alkanediol and trimethylolalkane (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as an ingredient in paints. Based on the estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns

for lung effects if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- Application method during use other than the confidential method described in the PMN; and
- No manufacturing, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11606.

*PMN Number: P–17–284*

*Chemical Name:* 2-Heptanone, 4-hydroxy-.

*CAS Number:* 25290–14–6.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as an in-process intermediate. Based on the estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for solvent neurotoxicity and irritation, sensitization, mutagenicity, neurotoxicity, reproductive toxicity, developmental toxicity, systemic toxicity, and aquatic toxicity if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- No release of the PMN substance resulting in surface water concentrations that exceed 1,000 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, reproductive/developmental toxicity, irritation, sensitization, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11607.

*PMN Number: P–17–285*

*Chemical Name:* 4-Hepten-2-one.

*CAS Number:* 24332–22–7.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as an in-process intermediate. Based on the estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for solvent neurotoxicity and irritation, eye and skin irritation, developmental, liver, and kidney toxicities, sensitization, and aquatic toxicity if the PMN substance is not used following the limitation noted. The conditions of use of the chemical substance as described in the PMN include the following protective measure:

- No release of the PMN substance resulting in surface water concentrations that exceed 730 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, reproductive/developmental toxicity, sensitization, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11608.

*PMN Number: P–17–360*

*Chemical Names:* 2-Propanol, 1-amino-, compd. with .alpha.-sulfo-.omega.-(octyloxy)poly(oxy-1,2-ethanediyl) (1:1) (P–17–360, chemical A) and 2-Propanol, 1-amino-, compd. with .alpha.-.sulfo-.omega.-(decyloxy)poly(oxy-1,2-ethanediyl) (1:1) (P–17–360, chemical B).

*CAS Numbers:* 2098904–74–4 (P–17–360, chemical A) and 2098904–80–2 (P–17–360, chemical B).

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substances will be as surfactants for oil and gas recovery. Based on the estimated physical/chemical properties of the PMN substances, comparison to structurally analogous chemical substances, comparison to analogous anionic surfactant substances, and submitted test data on the PMN substances, EPA has identified concerns for lung effects (surfactancy), irritation to the skin, eye, mucous membranes, and lungs, and systemic (kidney, liver, and thymus) effects if the chemical substances are not used following the limitation noted. The conditions of use of the PMN substances as described in the PMN include the following protective measure:

- No manufacturing, processing, or use of the PMN substances in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substances if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, skin irritation, eye irritation, and pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substances.

*CFR Citations:* 40 CFR 721.11609 (P–17–360, chemical A) and 40 CFR 721.11610 (P–17–360, chemical B).

*PMN Number: P–18–19*

*Chemical Name:* Substituted benzene, 4-[2-[2-hydroxy-3-[[(3-nitrophenyl)amino]carbonyl]-1-naphthalenyl]diazenyl]-, sodium salt (1:1) (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the use of the PMN substance will be as a dispersive pigment. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, comparison to analogous acid dyes and amphoteric dyes, and submitted test data on the PMN substance, EPA has identified concerns for eye irritation, skin sensitization, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- No use of the PMN substance in a consumer product;
- No domestic manufacture (*i.e.,* import only); and

• No release of the PMN substance resulting in surface water concentrations that exceed 260 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of eye irritation, skin sensitization, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11611.

*PMN Number: P–18–34*

*Chemical Name:* Polyetheramine carboxylate salt (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the use of the PMN substance will be as a dispersing agent for pigments in industrial paints and coatings. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and comparison to analogous polycationic polymers, EPA has identified concerns for lung effects and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

• No use of the PMN substance in a consumer product;

• Use of the PMN substance only as a dispersing agent for pigments in industrial paints and coatings;

• No processing beyond a maximum concentration of 1% in the formulation of the final product;

• No manufacture or processing of the PMN substance in any manner that results in inhalation exposure; and

• No release of the PMN substance resulting in surface water concentrations that exceed 45 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11612.

*PMN Number: P–18–121*

*Chemical Name:* Benzene, 1,1′-oxybis-, branched eicosyl derivs.

*CAS Number:* 1800419–55–9.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as an additive for lubricating grease. Based on estimated physical/chemical properties of the PMN substance and submitted test data on the PMN substance, EPA has identified concerns for neurotoxicity, kidney effects, and blood effects if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

• Use of the PMN substance only for the confidential use described in the PMN.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of workplace exposure monitoring may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11613.

*PMN Number: P–18–168*

*Chemical Name:* Alkoxylated triaryl methane (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as a color additive. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and test data submitted on the PMN substance, EPA has identified concerns for lung surfactancy if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

• No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11614.

*PMN Numbers: P–18–179, P–18–180, and P–18–181*

*Chemical Names:* Phenolic resin, alkali, polymer with formaldehyde and phenol, sodium salt (generic) (P–18–179), Phenol, polymer with formaldehyde and phenolic resin, potassium salt (generic) (P–18–180), and Phenol, polymer with formaldehyde and phenolic resin, potassium sodium salt (generic) (P–18–181).

*CAS Numbers:* Not available.

*Basis for action:* The PMNs state that the generic (non-confidential) use of the PMN substances will be as adhesives. Based on the estimated physical/chemical properties of the PMN substances, comparison to structurally analogous chemical substances, and comparison to analogous polyanionic polymers, EPA has identified concerns for irritation, corrosion, and aquatic toxicity if the chemical substances are not used following the limitations noted. The conditions of use of the PMN substances as described in the PMN include the following protective measures:

• No manufacture (including import) of the PMN substances to contain greater than 0.1% unbound formaldehyde residuals by weight;

• No use of the PMN substances other than for the confidential uses described in the PMNs;

• No manufacture of the PMN substances such that the weight percent of low molecular weight species below 1000 daltons exceeds the confidential value specified in the PMNs; and

• No manufacture, processing, or use of the PMN substances in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substances if a manufacturer or processor is

considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of absorption, distribution, metabolism, and excretion (ADME), repeated dose, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substances.

*CFR Citations:* 40 CFR 721.11615 (P–18–179), 40 CFR 721.11616 (P–18–180), and 40 CFR 721.11617 (P–18–181).

*PMN Number: P–18–192*

*Chemical Name:* Benzenesulfonic acid, (alkenediyl)bis[[[(hydroxyalkyl)amino]-(phenylamino)-triazin-2-yl]amino]-, N-(hydroxyalkyl) derivs., salts, compds. with polyalkyl-substituted(alkanol) (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the use of the PMN substance will be as an optical brightener for use in paper applications. Based on estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for respiratory tract effects, systemic toxicity, developmental effects, and irritation to the skin, eye, and mucous membranes if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- Use of the PMN substance only as an optical brightener for use in paper applications; and
- No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11618.

*PMN Number: P–18–197*

*Chemical Name:* Metal, alkylcarboxylate oxo complexes (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as a polymer composite additive. Based on estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for lung overload and respiratory irritation if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- No use of the PMN substance other than for the confidential use described in the PMN; and
- No manufacture or processing of the PMN substance without the confidential engineering controls described in the PMN.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11619.

*PMN Number: P–18–221*

*Chemical Name:* Polyglycerol reaction product with acid anhydride, etherified (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the use of the PMN substance will be as a binder for wood panels. Based on estimated physical/chemical properties of the PMN substance, identified structural alerts, and comparison to structurally analogous chemical substances, EPA has identified concerns for skin and lung sensitization, germ cell mutagenicity, carcinogenicity, and developmental, reproductive, liver, and kidney toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- No manufacturing, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of absorption, specific target organ toxicity, irritation, sensitization, and developmental toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11620.

*PMN Numbers: P–18–258 and P–18–259*

*Chemical Names:* Dioic acids, polymers with caprolactam and alkyldiamines (generic) (P–18–258) and Fatty acids, dimers, hydrogenated, polymers with caprolactam and alkyldiamine (generic) (P–18–259).

*CAS Numbers:* Not available.

*Basis for action:* The PMNs state that the generic (non-confidential) use of the PMN substances will be as copolyamides for packaging films. Based on estimated physical/chemical properties of the PMN substances and comparison to structurally analogous chemical substances, EPA has identified concerns for lung toxicity if the chemical substances are not used following the limitations noted. The conditions of use of the PMN substances as described in the PMNs include the following protective measure:

- No manufacturing, processing, or use of the PMN substances in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substances if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substances.

*CFR Citations:* 40 CFR 721.11621 (P–18–258) and 40 CFR 721.11622 (P–18–259).

*PMN Number: P–18–277*

*Chemical Name:* Poly[2-(Dimethylamino)ethyl acrylate chloride salt, vinyl acetate, methacrylic acid and alkyl acrylates] (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the

PMN substance will be as an adhesive. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and comparison to analogous amphoteric polymers, EPA has identified concerns for lung surfactancy if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

• No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11623.

*PMN Number: P–18–278*

*Chemical Name:* Isophthalic acid, polymer with terephthalic acid and C4 and C6 dialkyl amines (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the use of the PMN substance will be as a resin for molded automotive parts and electrical and electronic equipment. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and comparison to analogous high molecular weight polymers, EPA has identified concerns for lung overload if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

• No manufacture (including import) of the PMN substance with particle sizes less than 10 microns.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11624.

*PMN Number: P–18–299*

*Chemical Name:* Alkenoic acid, alkyl-, polymers with alkyl methacrylate, cycloalkyl methacrylate, alkylene dimethacrylate, and polyalkene glycol hydrogen sulfate [(branched alkyloxy)alkyl]-(alkenyloxy)alkyl ethers ammonium salts, metal salts (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as an ink additive. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and submitted test data on the PMN substance, EPA has identified concerns for lung toxicity and lung cancer if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

• No manufacturing, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11625.

*PMN Number: P–18–375*

*Chemical Name:* Fats and Glyceridic oils, vegetable, sulfonated, sodium salts.

*CAS Number:* 97489–04–8.

*Basis for action:* The PMN states that the use of the PMN substance will be in the fat liquoring stage in the production of leather as part of an aqueous emulsion containing about 10 to 25 percent PMN substance with lubricant oils, nonionic surfactants and anionic surfactants. Based on estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for irritation, corrosion, and lung effects if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

• No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation and pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11626.

*PMN Number: P–18–379*

*Chemical Name:* Cashew nutshell liq., polymer with bisphenol A, epichlorohydrin, amines, formaldehyde, and glycol (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as a hardener for waterborne epoxy systems. Based on estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for cationic binding to the lungs, irritation to the eyes and skin, and sensitization if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

• No manufacture (including import) of the PMN substance such that the weight percent of low molecular weight species below 500 daltons exceeds 1% and the weight percent of low molecular weight species below 1,000 daltons exceeds 6%; and

• No manufacturing, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects, skin irritation/

corrosion, eye irritation/corrosion, and skin sensitization testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11627.

*PMN Number: P–18–401*

*Chemical Name:* Glycerides, C16–18 and C18-unsatd. mono- and di-, citrates.

*CAS Number:* 91052–16–3.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as an additive. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, comparison to analogous anionic surfactants, and submitted test data on the PMN substance, EPA has identified concerns for lung effects and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

- No use of the PMN substance in formulations greater than 0.01% in a manner that results in inhalation exposure; and
- No release of the PMN substance resulting in surface water concentrations that exceed 12 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11628.

*PMN Number: P–19–3*

*Chemical Name:* Polyaromatic ether symmetrical dicarboxylic anhydride (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the use of the PMN substance will be as a chemical intermediate. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and comparison to analogous anhydrides, carboxylic acids, EPA has identified concerns for cardiac, blood, muscle, reproductive, and developmental toxicity, skin and eye irritation, and respiratory sensitization. if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- No manufacturing, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of sensitization, reproductive and developmental effects, and specific organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11629.

*PMN Number: P–19–28*

*Chemical Name:* Alkyl salicylate, metal salts (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will as a lubricating oil additive. Based on the estimated physical/chemical properties of the PMN substance and submitted test data on the PMN substance, EPA has identified concerns for lung surfactancy and sensitization if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- No manufacturing, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin sensitization and specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11630.

*PMN Number: P–19–40*

*Chemical Name:* Alkyl bis(dialkylamino alkyl) amide (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as an intermediate. Based on comparison to structurally analogous chemical substances and metabolites, EPA has identified concerns for corrosion and irritation for the lungs, skin, and eyes, lung damage, systemic effects, reproductive/developmental toxicity, and sensitization if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin sensitization and specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11631.

*PMN Number: P–19–117*

*Chemical Name:* Polycyclic amine, reaction products with polyalkylalkene, polymers (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as an additive. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, and submitted test data on the PMN substance, EPA has identified concerns for liver effects and developmental toxicity if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- Use of the PMN substance only for the confidential use described in the PMN.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information

may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of developmental and specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11632.

*PMN Number: P–19–121*

*Chemical Name:* Plant based oils, polymer with 1,1′-methylenebis[4-isocyanatobenzene], pentaerythritol, phthalic esters, polypropylene glycol and polypropylene glycol ether with glycerol (3:1) (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the use of the PMN substance will be as an industrial adhesive. Based on estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for irritation to all exposed tissues, dermal and respiratory sensitization, and lung effects if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- No use of the PMN substance in spray applications.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of eye damage, skin irritation, skin sensitization, and pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11633.

*PMN Number: P–19–130*

*Chemical Name:* Aminohydroxy naphthalenesulfonic acid, coupled with diazotized[(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino [[(sulfooxy)ethyl] sulfonyl]benzenesulfonic acid, salts (generic).

*CAS Number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the PMN substance will be as a dye. Based on estimated physical/chemical properties of the PMN substance, comparison to structurally analogous chemical substances, analysis of analogous acid dyes and amphoteric dyes and vinyl sulfones, and submitted test data on the PMN substance, EPA has identified concerns for irreversible damage to eyes and irritation to mucous membranes if the chemical substance is not used following the limitation noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- Use of the PMN substance only for the confidential use described in the PMN.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

*Potentially Useful Information:* EPA has determined that certain information may be potentially useful to characterize the human health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of eye damage and specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance.

*CFR Citation:* 40 CFR 721.11634.

## V. Rationale and Objectives of the Proposed Rule

### *A. Rationale*

During review of the chemical substances that are the subject of these SNURs and as further discussed in Unit IV, EPA identified certain circumstances that raised potential risk concerns. EPA determined that deviations from the limitations identified in the submissions could result in changes in the type or form of exposure to the chemical substances and/or increased exposures to the chemical substances and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substances, and therefore warranted SNURs. The SNURs would identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the certain limitations in the submission.

### *B. Objectives*

EPA is proposing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

## VI. Applicability of the Proposed Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. The identities of many of the chemical substances subject to this proposed rule have been claimed as confidential per 40 CFR 720.85. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

Therefore, EPA designates October 12, 2021 as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the

TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

## VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, TSCA Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, TSCA Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known or reasonably ascertainable (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for all SNURs listed here. Descriptions of this information is provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed rule will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use.

EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce.*

The potentially useful information listed in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

## VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

## IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule. EPA's complete economic analysis is available in the docket for this rulemaking.

## X. Statutory and Executive Order Reviews

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

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review*

This proposed rule would establish SNURs for several new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act (PRA)*

According to the PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection activities related to this action have already been approved by OMB under the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This proposed rule does not contain any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including using automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

### *C. Regulatory Flexibility Act (RFA)*

Pursuant to the RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of

these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

*D. Unfunded Mandates Reform Act (UMRA)*

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

*E. Executive Order 13132: Federalism*

This action would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

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

This action would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action would not significantly nor uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

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

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this proposed rule is not expected to affect energy supply, distribution, or use.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This action does not involve any technical standards subject to NTTAA section 12(d) (15 U.S.C. 272 note).

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

**List of Subjects in 40 CFR Part 721**

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 28, 2021.

**Tala Henry,**

*Deputy Director, Office of Pollution Prevention and Toxics.*

Therefore, for the reasons stated in the preamble, it is proposed that 40 CFR chapter I be amended as follows:

## PARTS 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, 2613, and 2625(c).

■ 2. Add §§ 721.11604 through 721.11634 to subpart E to read as follows:

### Subpart E—Significant New Uses for Specific Chemical Substances

Sec.

721.11604 Dimethyl cyclohexenyl propanol (generic).
721.11605 Fatty acids, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle, fatty acid and alkylamine, lactates (salts) (generic).
721.11606 Carbonic acid, dialkyl ester, polymers with 5-amino-1,3,3-trimethylcycloalkanemethanamine, 2-ethyl-1-alcohol-blocked 1,6-diisocyanatoalkane homopolymer and 1,6-alkanediol and trimethylolalkane (generic).
721.11607 2-Heptanone, 4-hydroxy-.
721.11608 4-Hepten-2-one.
721.11609 2-Propanol, 1-amino-, compd. with .alpha.-sulfo-.omega.-(octyloxy)poly(oxy-1,2-ethanediyl) (1:1).
721.11610 2-Propanol, 1-amino-, compd. with .alpha.-.sulfo-.omega.-(decyloxy)poly(oxy-1,2-ethanediyl) (1:1).
721.11611 Substituted benzene, 4-[2-[2-hydroxy-3-[[(3-nitrophenyl) amino]carbonyl]-1-naphthalenyl] diazenyl]-, sodium salt (1:1) (generic).
721.11612 Polyetheramine carboxylate salt (generic).
721.11613 Benzene, 1,1′-oxybis-, branched eicosyl derivs.
721.11614 Alkoxylated triaryl methane (generic).
721.11615 Phenolic resin, alkali, polymer with formaldehyde and phenol, sodium salt (generic).
721.11616 Phenol, polymer with formaldehyde and phenolic resin, potassium salt (generic).
721.11617 Phenol, polymer with formaldehyde and phenolic resin, potassium sodium salt (generic).
721.11618 Benzenesulfonic acid, (alkenediyl)bis[[[(hydroxyalkyl)amino]-(phenylamino)-triazin-2-yl]amino]-, N-(hydroxyalkyl) derivs., salts, compds. with polyalkyl-substituted(alkanol) (generic).
721.11619 Metal, alkylcarboxylate oxo complexes (generic).
721.11620 Polyglycerol reaction product with acid anhydride, etherified (generic).
721.11621 Dioic acids, polymers with caprolactam and alkyldiamines (generic).
721.11622 Fatty acids, dimers, hydrogenated, polymers with caprolactam and alkyldiamine (generic).
721.11623 Poly[2-(Dimethylamino)ethyl acrylate chloride salt, vinyl acetate, methacrylic acid and alkyl acrylates] (generic).
721.11624 Isophthalic acid, polymer with terephthalic acid and C4 and C6 dialkyl amines (generic).
721.11625 Alkenoic acid, alkyl-, polymers with alkyl methacrylate, cycloalkyl methacrylate, alkylene dimethacrylate, and polyalkene glycol hydrogen sulfate [(branched alkyloxy)alkyl]-(alkenyloxy) alkyl ethers ammonium salts, metal salts (generic).
721.11626 Fats and Glyceridic oils, vegetable, sulfonated, sodium salts.
721.11627 Cashew nutshell liq., polymer with bisphenol A, epichlorohydrin, amines, formaldehyde, and glycol (generic).
721.11628 Glycerides, C16–18 and C18-unsatd. mono- and di-, citrates.
721.11629 Polyaromatic ether symmetrical dicarboxylic anhydride (generic).
721.11630 Alkyl salicylate, metal salts (generic).

721.11631 Alkyl bis(dialkylamino alkyl) amide (generic).
721.11632 Polycyclic amine, reaction products with polyalkylalkene, polymers (generic).
721.11633 Plant based oils, polymer with 1,1′-methylenebis[4-isocyanatobenzene], pentaerythritol, phthalic esters, polypropylene glycol and polypropylene glycol ether with glycerol (3:1) (generic).
721.11634 Aminohydroxy naphthalene sulfonic acid, coupled with diazotized[(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino [[(sulfooxy)ethyl]sulfonyl]benzene sulfonic acid, salts (generic).

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## Subpart E—Significant New Uses for Specific Chemical Substances

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### § 721.11604 Dimethyl cyclohexenyl propanol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dimethyl cyclohexenyl propanol (PMN P–16–420) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=55.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

### § 721.11605 Fatty acids, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle, fatty acid and alkylamine, lactates (salts) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acids, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle, fatty acid and alkylamine, lactates (salts) (PMN P–16–446) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=38.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

### § 721.11606 Carbonic acid, dialkyl ester, polymers with 5-amino-1,3,3-trimethylcycloalkanemethanamine, 2-ethyl-1-alcohol-blocked 1,6-diisocyanatoalkane homopolymer and 1,6-alkanediol and trimethylolalkane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbonic acid, dialkyl ester, polymers with 5-amino-1,3,3-trimethylcycloalkanemethanamine, 2-ethyl-1-alcohol-blocked 1,6-diisocyanatoalkane homopolymer and 1,6-alkanediol and trimethylolalkane (PMN P–16–602) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use an application method during use other than the confidential method described in the PMN. It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

### § 721.11607 2-Heptanone, 4-hydroxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-heptanone, 4-hydroxy-. (PMN P–17–284; CAS No. 25290–14–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1,000.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

### § 721.11608 4-Hepten-2-one.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 4-hepten-2-one (PMN P–17–285; CAS No. 24332–22–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=730.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

### § 721.11609 2-Propanol, 1-amino-, compd. with .alpha.-sulfo-.omega.-(octyloxy)poly(oxy-1,2-ethanediyl) (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propanol, 1-amino-, compd. with .alpha.-sulfo-.omega.-(octyloxy)poly(oxy-1,2-ethanediyl) (1:1) (PMN P–17–360, chemical A; CAS No. 2098904–74–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11610 2-Propanol, 1-amino-, compd. with .alpha.-.sulfo-.omega.-(decyloxy)poly(oxy-1,2-ethanediyl) (1:1).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propanol, 1-amino-, compd. with .alpha.-.sulfo-.omega.-(decyloxy)poly(oxy-1,2-ethanediyl) (1:1) (PMN P–17–360, chemical B; CAS No. 2098904–80–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11611 Substituted benzene, 4-[2-[2-hydroxy-3-[[(3-nitrophenyl)amino]carbonyl]-1-naphthalenyl]diazenyl]-, sodium salt (1:1) (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted benzene, 4-[2-[2-hydroxy-3-[[(3-nitrophenyl)amino]carbonyl]-1-naphthalenyl]diazenyl]-, sodium salt (1:1) (PMN P–18–19) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (o).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=260.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11612 Polyetheramine carboxylate salt (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyetheramine carboxylate salt (PMN P–18–34) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to use the PMN substance other than as a dispersing agent for pigments in industrial paints and coatings. It is a significant new use to process the PMN substance to greater than 1% by weight in the formulation of the final product. It is a significant new use to manufacture or process the PMN substance in any manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=45.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11613 Benzene, 1,1′-oxybis-, branched eicosyl derivs.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, 1,1′-oxybis-, branched eicosyl derivs. (PMN P–18–121; CAS No. 1800419–55–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

**§ 721.11614 Alkoxylated triaryl methane (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkoxylated triaryl methane (PMN P–18–168) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in a manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11615 Phenolic resin, alkali, polymer with formaldehyde and phenol, sodium salt (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phenolic resin, alkali, polymer with formaldehyde and phenol, sodium salt (PMN P–18–179) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as

specified in § 721.80(j). It is a significant new use to manufacture the PMN substance to contain greater than 0.1% unbound formaldehyde residuals by weight. It is a significant new use to manufacture or process the PMN substance such that the weight percent of low molecular weight species below 1,000 Daltons exceeds the confidential value specified in the PMN. It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

**§ 721.11616 Phenol, polymer with formaldehyde and phenolic resin, potassium salt (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phenol, polymer with formaldehyde and phenolic resin, potassium salt (PMN P–18–180) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to manufacture the PMN substance to contain greater than 0.1% unbound formaldehyde residuals by weight. It is a significant new use to manufacture or process the PMN substance such that the weight percent of low molecular weight species below 1000 Daltons exceeds the confidential value specified in the PMN. It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

**§ 721.11617 Phenol, polymer with formaldehyde and phenolic resin, potassium sodium salt (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phenol, polymer with formaldehyde and phenolic resin, potassium sodium salt (PMN P–18–181) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to manufacture the PMN substance to contain greater than 0.1% unbound formaldehyde residuals by weight. It is a significant new use to manufacture or process the PMN substance such that the weight percent of low molecular weight species below 1000 Daltons exceeds the confidential value specified in the PMN. It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

**§ 721.11618 Benzenesulfonic acid, (alkenediyl)bis[[[(hydroxyalkyl)amino]-(phenylamino)-triazin-2-yl]amino]-, N-(hydroxyalkyl) derivs., salts, compds. with polyalkyl-substituted(alkanol) (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as benzenesulfonic acid, (alkenediyl)bis[[[(hydroxyalkyl)amino]-(phenylamino)-triazin-2-yl]amino]-, N-(hydroxyalkyl) derivs., salts, compds. with polyalkyl-substituted(alkanol) (PMN P–18–192) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the PMN substance other than as an optical brightener for use in paper applications. It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11619 Metal, alkylcarboxylate oxo complexes (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as metal, alkylcarboxylate oxo complexes (PMN P–18–197) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to manufacture or process the PMN substance without the confidential engineering controls described in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

**§ 721.11620 Polyglycerol reaction product with acid anhydride, etherified (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyglycerol reaction product with acid anhydride, etherified (PMN P–18–221) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11621 Dioic acids, polymers with caprolactam and alkyldiamines (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dioic acids, polymers with caprolactam and alkyldiamines (PMN P–18–258) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11622 Fatty acids, dimers, hydrogenated, polymers with caprolactam and alkyldiamine (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acids, dimers, hydrogenated, polymers with caprolactam and alkyldiamine (PMN P–18–259) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11623 Poly[2-(Dimethylamino)ethyl acrylate chloride salt, vinyl acetate, methacrylic acid and alkyl acrylates] (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as poly[2-(Dimethylamino)ethyl acrylate chloride salt, vinyl acetate, methacrylic acid and alkyl acrylates] (PMN P–18–277) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11624 Isophthalic acid, polymer with terephthalic acid and C4 and C6 dialkyl amines (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isophthalic acid, polymer with terephthalic acid and C4 and C6 dialkyl amines (PMN P–18–278) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture the PMN substance with particle sizes less 10 microns.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11625 Alkenoic acid, alkyl-, polymers with alkyl methacrylate, cycloalkyl methacrylate, alkylene dimethacrylate, and polyalkene glycol hydrogen sulfate [(branched alkyloxy)alkyl]-(alkenyloxy)alkyl ethers ammonium salts, metal salts (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically alkenoic acid, alkyl-, polymers with alkyl methacrylate, cycloalkyl methacrylate, alkylene dimethacrylate, and polyalkene glycol hydrogen sulfate [(branched alkyloxy)alkyl]-(alkenyloxy)alkyl ethers ammonium salts, metal salts (PMN P–18–299) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i), are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11626 Fats and glyceridic oils, vegetable, sulfonated, sodium salts.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as fats and glyceridic oils, vegetable, sulfonated, sodium salts (PMN P–18–375; CAS No. 97489–04–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11627 Cashew nutshell liq., polymer with bisphenol A, epichlorohydrin, amines, formaldehyde, and glycol (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as cashew nutshell liq., polymer with bisphenol A, epichlorohydrin, amines, formaldehyde, and glycol (PMN P–18–379) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture (including import) the PMN substance such that the weight percent of low molecular weight species below 500 daltons exceeds 1% and the weight percent of low molecular weight species below 1,000 daltons exceeds 6%. It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11628 Glycerides, C16–18 and C18-unsatd. mono- and di-, citrates.**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as glycerides, C16–18 and C18-unsatd. mono- and di-, citrates (PMN P–18–401; CAS No. 91052–16–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the PMN substance in formulations greater than 0.01% in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4) and (c)(4), where N=12.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11629 Polyaromatic ether symmetrical dicarboxylic anhydride (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyaromatic ether symmetrical dicarboxylic anhydride (PMN P–19–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11630 Alkyl salicylate, metal salts (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl salicylate, metal salts (PMN P–19–28) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11631 Alkyl bis(dialkylamino alkyl) amide (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl bis(dialkylamino alkyl) amide (PMN P–19–40) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11632 Polycyclic amine, reaction products with polyalkylalkene, polymers (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as polycyclic amine, reaction products with polyalkylalkene, polymers (PMN P–19–117) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

**§ 721.11633 Plant based oils, polymer with 1,1′-methylenebis[4-isocyanatobenzene], pentaerythritol, phthalic esters, polypropylene glycol and polypropylene glycol ether with glycerol (3:1) (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as plant based oils, polymer with 1,1′-methylenebis[4-isocyanatobenzene], pentaerythritol, phthalic esters, polypropylene glycol and polypropylene glycol ether with glycerol (3:1) (PMN P–19–121) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the substance in spray applications.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

**§ 721.11634 Aminohydroxy naphthalenesulfonic acid, coupled with diazotized [(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino [[(sulfooxy)ethyl]sulfonyl]benzenesulfonic acid, salts (generic).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aminohydroxy naphthalenesulfonic acid, coupled with diazotized[(aminophenyl)sulfonyl]ethyl hydrogen sulfate and diazotized amino [[(sulfooxy)ethyl]sulfonyl]benzene sulfonic acid, salts (PMN P–19–130) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

* * * * *

[FR Doc. 2021–21872 Filed 10–8–21; 8:45 am]

BILLING CODE 6560–50–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### 41 CFR Part 51–4

**RIN 3037–AA16**

## Prohibition on the Payment of Subminimum Wages Under 14(c) Certificates as a Qualification for Participation as a Nonprofit Agency Under the Javits Wagner O'Day Program

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Commission proposes to add a new qualification requirement. The requirement provides that for each nonprofit agency (''NPA'') that seeks to qualify or maintain its qualifications under the AbilityOne Program, the NPA must certify that it will not pay subminimum wages using special wage certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 to employees on all contracts or subcontracts awarded, extended (other than through the exercise of an option) or renewed under the program after the effective date of the final rule.

**DATES:** The Commission will consider all comments submitted electronically on or before November 12, 2021.

**ADDRESSES:** You may submit comments, identified by RIN 3037–AA16, only by the following method: Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *https://www.regulations.gov.* To locate the proposed rule, use RIN 3037–AA16 or key words such as ''Section 14(c),'' ''Committee for Purchase,'' or ''Subminimum Wage'' to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an alternative 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.* You may also access documents of Commission published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

**FOR FURTHER INFORMATION CONTACT:** Shelly Hammond, Director of Contracting and Policy, by telephone (703) 603–2100 or by email at *shammond@abiltyone.gov.*

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing *Regulations.gov.*

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: Upon request, we will provide an appropriate accommodation to an individual with a disability who needs assistance to review the comments for the proposed rule. If you want to contact us to request assistance, please contact the person listed in this section.

**SUPPLEMENTARY INFORMATION:**

## I. The AbilityOne Program

The Javits-Wagner-O'Day Act (''JWOD'') Act, *see* 41 U.S.C. 8501–8506, leverages the purchasing power of the Federal Government to create employment opportunities for individuals who are blind or have significant disabilities through a program called AbilityOne. Under JWOD, the U.S. AbilityOne Commission, an independent Federal agency, maintains a list of products and services offered by NPAs employing workers who are blind or have significant disabilities, known as the AbilityOne Procurement List. *See* 41 CFR 51–1.3. Federal Government entities procuring products or services on the Procurement List then purchase them from the sources identified by the Commission. NPAs are subject to qualification standards during their initial qualification for the program and are subject to qualification standards to maintain their participation in the program. *See* 41 CFR 51–4.2 (initial qualification) and 41 CFR 51–4.3 (maintaining qualifications).

The AbilityOne Commission consists of 15 members appointed by the President. Eleven Commission members represent Federal agencies, including a member each from the Departments of Defense, Army, Navy, and Air Force, Agriculture, Education, Commerce, Veterans Affairs, Justice, and Labor, and the General Services Administration. *See* 41 U.S.C. 8502(b)(1). The four non–Federal Government members must include one each knowledgeable about employment issues regarding individuals who are blind and individuals with significant disabilities, and one each representing employees from NPAs who employ individuals who are blind and individuals with significant disabilities providing services or goods under an NPA that would be qualified under the program. *See* 41 U.S.C. 8502(b)(2).

As outlined in the JWOD Act, the Commission has five primary roles under the program. First, the Commission decides on the addition or removal of products or services from the AbilityOne Procurement List. *See* 41 U.S.C. 8503(a). Second, the Commission sets the fair market price the Federal Government will pay the NPAs for the products or services. *See* 41 U.S.C. 8503(b). Third, the Commission is responsible for designating nonprofit agencies to be central nonprofit agencies (CNAs) to facilitate the distribution of the orders for products and services among the participating NPAs. *See* 41 U.S.C. 8503(c). Fourth, the Commission is responsible for promulgating regulations ''on other matters as necessary'' to carry out the law. *See* 41 U.S.C. 8503(d)(1). Finally, the Commission is responsible for engaging in a ''continuing study and evaluation of its activities'' to ensure the effective administration of the law. *See* 41 U.S.C. 8503(e).

The Commission has designated National Industries for the Blind (''NIB''), whose members primarily employ individuals who are blind or have vision impairments; and SourceAmerica, whose members consist of more than 400 nonprofit organizations that typically employ workers with more significant disabilities, as CNAs for the AbilityOne Program. The CNAs facilitate the distribution of orders, provide information as needed by the Commission, and otherwise assist the Commission in implementing its regulations. *See* 41 CFR 51–1.3 (definition of CNA); *see* also 41 CFR 51–3.2 (describing numerous responsibilities of the CNAs).

The Commission's regulations at 41 CFR 51–4.2 identify the initial qualification requirements for NPAs seeking to participate in the AbilityOne Program. For example, to be initially qualified, a NPA must submit documents demonstrating that it is incorporated and has bylaws worded to the effect that no part of the net income of the NPA may inure to the benefit of any shareholder or other individual. 41 CFR 51–4.2(a)(1)(iii)(A). The Commission then reviews the documents submitted and, if acceptable, notifies the NPA and its CNA. 41 CFR 51–4.2(b).

To maintain qualification, a NPA must annually certify that it complies with the definition of a qualified NPA as specified in 41 CFR 51–1.3 as well as several additional requirements identified in 41 CFR 51–4.3(b) and (c). The Commission receives Annual Representations and Certifications from every AbilityOne participating NPA, through the CNAs, and reviews them to determine whether the NPAs are maintaining qualification. 41 CFR 51–4.3(a). The Commission ensures that the NPA has submitted its Annual Representation and Certification and that it has complied with all the requirements on those forms. 41 CFR 51–4.2(b) and 51–4.3(a). One of the regulatory criteria that the Commission must consider in determining the suitability of a proposed addition to the Procurement List is the qualification of the nonprofit agency to furnish the product or service. 41 CFR 51–2.4(a)(2).

## II. Section 14(c) of the Fair Labor Standards Act of 1938

The Fair Labor Standards Act of 1938 (''FLSA'') provides for the employment of certain individuals at wage rates below the generally applicable statutory minimum. 29 U.S.C. 201, *et seq.* Section 14(c) of the FLSA provides that ''[t]he Administrator [of the Wage and Hour Division], to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or by orders provide for . . . (2) the employment of individuals whose earning capacity is impaired by physical or mental deficiency or injury, under special certificates issued by the Administrator, at such wages lower than the minimum wage.'' *See* 29 U.S.C. 214(c).

If an employer wishes to pay wages that are below the Federal minimum wage rate to workers with disabilities, the employer first must obtain an authorizing certificate from the Secretary of Labor (''Secretary''). *See* 29 U.S.C. 214(c)(1). The Secretary may issue certificates authorizing employers to pay workers with disabilities subminimum wage rates which are commensurate with those paid to workers not disabled for the work to be performed employed in the vicinity for essentially the same type, quality, and quantity of work ''to the extent necessary to prevent curtailment of opportunities for employment'' for such workers with disabilities. 29 U.S.C. 214(b)(1)(A). The employee's subminimum wage is based on their productivity (no matter how limited) compared to the norm established for workers without disabilities through the use of verifiable work measurement or the productivity of experienced workers who do not have disabilities employed in the vicinity on comparable work. *See* 29 CFR 525.9(a)(3). For example, if the productivity or output of a worker with a disability is measured to be 60% as much as the productivity or output of an experienced worker who does not have a disability performing comparable work, the subminimum wage for the worker with a disability would be at least 60% of the prevailing wage (the wage rate paid to experienced workers in the vicinity who do not have disabilities performing the same or similar work). *See* 29 CFR 525.3(i).

A subminimum wage is always less than the applicable minimum wage otherwise required by section 6(a) of the FLSA, or where applicable, the prevailing wage required by the McNamara-O'Hara Service Contract Act (''SCA'').

The SCA applies to service contracts entered into between individuals or companies and the Federal Government, including the District of Columbia. The SCA requires contractors and subcontractors performing services on prime contracts in excess of $2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality. 29 CFR 4.4(a)(1). A ''service employee'' (A) means an individual engaged in the performance of a contract made by the Federal Government and not exempted under 41 U.S.C. 6702(b), whether negotiated or advertised, the principal purpose of which is to furnish services in the United States; (B) includes an individual without regard to any contractual relationship alleged to exist between the individual and a contractor or subcontractor; but (C) does not include an individual employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. *See* 41 U.S.C. 6701(3). A subminimum wage rate is determined by comparing the productivity of the worker with a disability against the productivity of an experienced worker without a disability for the work being performed—the ''standard.''

The SCA governs most Federal contracts for services. Under the SCA, the prevailing wage is the wage listed on a wage determination by the U.S. Department of Labor for the classification of work being performed. *See* 29 CFR 4.51. If a Federal contract is covered by the SCA, all service employees (including those paid pursuant to section 14(c)) must receive the full fringe benefits as listed on the wage determination. *See* 29 CFR 4.3. For example, if a worker with a disability is performing work on an SCA-covered contract in a job classification with a wage determination rate of $22.00 per hour and the worker's productivity is measured to be 75%, the worker must be paid at least $16.50 per hour under a section 14(c) certificate. The worker would also be due the full fringe benefit amount.

The recently issued Executive Order 14026 ''Increasing the Minimum Wage for Federal Contractors,'' 86 FR 22835 (April 30, 2021), calls for an increase in the minimum wage for workers of Federal contractors and subcontractors working on or in connection with covered Federal contracts, including ''any new contract; contract-like instrument; new solicitation; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract-like instrument.'' [1] The Executive Order 14026 raises the minimum wage on covered Federal contracts to $15.00 effective January 30, 2022. Executive Order 14026, sections 1 and 2(i). Executive Order 14026 built on Executive Order 13658, ''Establishing a Minimum Wage for Contractors,'' that raised the minimum wage to $10.10 for all workers on Federal construction and service contracts on February 12, 2014. See 79 FR 9849 (Feb. 20, 2014); Executive Order 13658, section 1 and 2(a)(i). Significantly, both of these Executive orders direct that workers employed under section 14(c) certificates performing work on or in connection with covered contracts must be paid at least the full applicable Executive order minimum wage rate.

## III. Evolution of Policies Regarding Employment of People With Disabilities

### *A. Historical Background on the FLSA and the Javits-Wagner-O'Day Act*

On June 25, 1938, President Roosevelt signed the FLSA into law. As part of the legislation, section 14(c) formally addressed the employment of individuals with disabilities. *See* 29 U.S.C. 214 (c).[2] The law created the authority for the U.S. Department of Labor to issue special certificates that permitted employers to pay less than the minimum wage in order to provide for the employment of individuals ''whose earning capacity is impaired by physical or mental deficiency or injury,'' *See* 29 U.S.C. 214(c). Since 1938, section 14(c)'s core premise that the productivity of an individual with a disability to perform work can be ''impaired'' by their disability has legally allowed employees with disabilities to be paid less than the applicable minimum wage where the individual's employer has obtained the certificate's authority to do so. Both Senator Robert F. Wagner and Congresswoman Caroline O'Day, the drafters of the 1938 legislation that authorized what is now the AbilityOne Program, the Wagner-O'Day Act, likewise expressed their intent to promote the employment of individuals who were blind by allowing NPAs to sell manufactured goods, such as mops and brooms, to the Federal Government for a fair market price.[3] During the more than 80-year history of the AbilityOne Program, Congress has substantially amended the JWOD Act only once. In 1971, Congress, led by Senator Jacob Javits, expanded the statute through amendments that added services provided by organizations that employ individuals with significant disabilities to the Procurement List, *see* S. Rep. No. 92–41, at 1 (1971), while maintaining an ongoing preference for goods provided by blind employees. *See* Javits-Wagner-O'Day Act of 1971, Public Law 92–28, sec. 6, 85 Stat. 77, 81, 82 (1971).

Congress amended the FLSA in 1986 to provide, among other changes, that subminimum wages paid to a worker with a disability under a certificate must be based on the individual's productivity commensurate with wages paid to workers without disabilities employed in the vicinity for essentially the same type, quality, and quantity of work.[4] *See* Public Law 99–486, 100 Stat. 1229 (October 16, 1986).

### *B. Overview of Changes in Modern Disability Law*

Two models of disability, often called the charity and medical models, emerged during the first half of the 20th century. The medical model promoted the idea that disability was something to be ''cured,'' and this model focused on the negative impact of an individual's disability rather than on the person's skills, talents, and abilities. Similarly, the charity model reinforced the idea that individuals with disabilities were

[1] Section 8a of Executive Order 14026 provides that the order applies to (i)(A) a procurement contract or contract-like instrument for services or construction; (B) a contract or contract-like instrument for services covered by the Service Contract Act; (C) a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR 4.133(b); or (D) a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (ii) the wages of workers under such contract or contract-like instrument are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act.

[2] The legislative origins of section 14(c) are found in the National Industrial Recovery Act of 1933 (''NIRA''). While ultimately declared unconstitutional by the Supreme Court in 1935 in *Schechter Poultry Corp.* v. *United States,* 295 U.S. 495 (1935), the NIRA contained a productivity-based subminimum wage specific to individuals with disabilities. *See* William G. Whittaker, *Treatment of Workers with Disabilities Under Section 14(c) of the Fair Labor Standards Act,* CORNELL UNIVERSITY ILR SCHOOL, Summary (Feb. 9, 2005), available at *https://ecommons.cornell.edu/bitstream/handle/1813/78685/CRS_February_2005_Treatment_of_Workers_with_Disabilities.pdf?sequence=1&isAllowed=y.*

[3] Melia Preedy, Subminimum or Subpar? A Note in Favor of Repealing the Fair Labor Standards Act's Subminimum Wage Program, SEATTLE UNIVERSITY LAW REVIEW, 37 Seattle U. L. Rev. 1097, 1104 (2014).

[4] This section does not address statutory changes to the FLSA between 1938 and 1986 and is intended to provide a brief overview highlighting the most significant changes to section 14(c) and the JWOD Act.

''tragic'' and should be ''pitied.'' [5] The original 1938 Wagner-O'Day-Act is a product of this era.

The marginalization of individuals with disabilities continued until World War I when veterans with disabilities demanded that the U.S. Government provide rehabilitation in exchange for their service to the nation. During the decade of the 1910s, Congress passed a series of laws to support soldiers who now had disabilities as a result of their service in World War I. For example, the Smith-Hughes Act made Federal funds available to states on a matching basis for vocational education programs in 1917.[6] Shortly thereafter, the Soldier's Rehabilitation Act created a vocational rehabilitation program for World War I veterans with disabilities.[7] Finally, in 1920, the landmark Smith-Fess Act (also known as the Civilian Vocational Rehabilitation Act) established the Vocational Rehabilitation program for American citizens with physical disabilities.[8] The law, however, did not provide services for individuals with developmental disabilities until the Rehabilitation Act Amendments of 1954.[9]

Despite the passage of the Wagner-O'Day Act, most individuals with disabilities still did not have access to public transportation, telephones, bathrooms, and stores. Further, worksites with stairs offered no access for individuals with physical disabilities, and other barriers often kept talented and eligible individuals with disabilities from obtaining and maintaining jobs with private sector employers.[10]

With the civil rights movement in the 1960s, disability advocates joined forces with other minority groups such as people of color, women, and other marginalized groups to demand equal treatment, equal access, and equal opportunity for individuals with disabilities. In 1973, when Congress passed the landmark Rehabilitation Act of 1973 (''Rehabilitation Act''), it included three non-discrimination sections. Sections 501 established a non-discrimination and affirmative action requirement for employees with disabilities within the Federal Government; section 503 established a non-discrimination and affirmative action requirement for employees with disabilities by Federal contractors and section 504 established a non-discrimination requirement for individuals with disabilities by any program or activity that receives Federal financial assistance. *See* 29 U.S.C. 791, 793, and 794.

In the 1980s, disability activists began to lobby for an expansion of disability rights so that entities that were not receiving Federal funds would also be prohibited from discriminating against individuals with disabilities. President George H.W. Bush signed the Americans with Disabilities Act (''ADA'') into law in 1990. This sweeping law prohibited discrimination because of disability in employment, services rendered by state and local governments, places of public accommodation, transportation, and telecommunications services. *See* 42 U.S.C. 12101–12213. Under the ADA, Congress mandated businesses to provide reasonable accommodations to individuals with disabilities (such as restructuring jobs or modifying work equipment), and that public services such as public transportation systems become more fully accessible to individuals with disabilities. Further, Congress found that ''segregation'' of individuals with disabilities was a ''for[m] of discrimination'' on the basis of disability. *See* 42 U.S.C. 12101(a)(2). Segregation, Congress recognized, is ''a serious and pervasive social problem'' that diminished the rights of individuals with disabilities ''to fully participate in all aspects of society.'' *Id.* at sec. 12101. With this piece of legislation, the U.S. government finally broke the old medical and charity models by identifying and championing the full participation, inclusion, and integration of individuals with disabilities in all levels of society.

Congress passed the ADA Amendments Act in 2008. The law restored the ADA's definition of disability, rejecting two Supreme Court rulings that had narrowed the scope of the ADA. These amendments made it easier for individuals with disabilities to obtain protection under the ADA and directed that the definition of ''disability'' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. The ADA Amendments Act made clear that the question of whether an individual meets the definition of disability should not demand extensive analysis and that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability.

More recently, Congress addressed the Nation's workforce development system with the passage of the Workforce Innovation and Opportunity Act (''WIOA'') in 2014. *See* 29 U.S.C. 3101 *et seq.*). WIOA reauthorized critical programs to help job seekers, including those with disabilities, to access the services they need to succeed in employment. In particular, section 188 of WIOA prohibits discrimination in the provision of services by requiring that American Job Centers and other programs and activities funded under WIOA ensure that individuals with disabilities have equal opportunity to participate in services and receive appropriate accommodations. In addition, title IV of WIOA amended the Rehabilitation Act by defining ''competitive integrated employment.'' *See* 29 U.S.C. 705(5). The law defines competitive integrated employment, in part, as work for which individuals receive wages equal to or exceeding the Federal, State, or local minimum wage rates.[11] In addition, title IV of WIOA added section 511, which requires that individuals with disabilities have access to training information and career counseling services to better enable them to achieve competitive integrated employment before and/or during employment at subminimum wages. 29 U.S.C. 794(g).

In short, since the enactment of the JWOD Act in 1938, Congress has made a consistent effort to move away from institutionalization, segregation, and unequal treatment of individuals with disabilities, and to move toward integration, inclusion, and equal treatment. U.S. public policy and approaches to serving individuals with disabilities have changed dramatically since 1938, and the Commission recognizes that the AbilityOne Program must change with the times as well. On March 18, 2016, the Commission issued a declaration that promoted/encouraged the NPAs in the program to discontinue use of subminimum wages under section 14(c).[12] The Commission believes that the continued payment of subminimum wages to employees with disabilities under section 14(c)

[5] Vaughn, Jacqueline. 2003. Disabled Rights: American Policy and the Fight for Equality. Washington, DC, Georgetown University Press. *See also* Richard K. Scotch, From Good Will to Civil Rights: Transforming Federal Disability Policy 20 (1984).

[6] 20 U.S.C. 11.

[7] 50 U.S.C. App. 1.

[8] Smith-Fess Act of 1920 (Pub. L. 66–236).

[9] 29 U.S.C. 4.

[10] Vaughn, Jacqueline. 2003. Disabled Rights: American Policy and the Fight for Equality. Washington, DC, Georgetown University Press.

[11] See 29 U.S.C. 705(5).

[12] AbilityOne Commission, Declaration in Support of Minimum Wage for All People Who Are Blind or Have Significant Disabilities, March 18, 2016. *https://www.abilityone.gov/commission/documents/US%20AbilityOne%20Commission%20Declaration%2018March2016%20Final.pdf.*

certificates is no longer aligned with modern disability policy.

*C. Recent Federal Reports on Section 14(c)*

Given this evolution in the Nation's overall approach to disability policy, the call for the phase out and elimination of subminimum wages has steadily grown in volume. In addition to civil rights organizations, many Federal Government agencies and official entities have underscored their concerns with the outdated employment model embodied by section 14(c). For example, in 2012, the National Council on Disability (''NCD'') issued a report titled ''Subminimum Wage and Supported Employment'' that called for the phase-out of section 14(c) certificates. *See* National Council on Disability, *Report on Subminimum Wage and Supported Employment,* September 27, 2012.

Notably, a Federal advisory committee tasked to provide recommendations about the future of section 14(c) released its final report in September 2016. In the report, the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (''ACICIEID'' or ''Committee'') urged, ''Congress should amend Section 14(c) of FLSA to allow for a well-designed, multi-year phase-out of the Section 14(c) Program that results in people with disabilities entering competitive integrated employment.'' *See* ACICIEID Final Report, (September 2016).[13] In a chapter addressing the AbilityOne Program, the Committee stated that AbilityOne should ''immediately eliminate the use of the FLSA Section 14(c) certificates for all contractors providing products or services to Federal customers under the AbilityOne Program.'' *See* ACICIEID Final Report, p. 59.

More recently, two Government reports have called for the repeal of section 14(c) as well as modernization of the AbilityOne Program. In October 2018, the NCD published a report, *From the New Deal to the Real Deal: Joining the Industries of the Future.* The report's first recommendation stated, ''NCD renews its call from 6 years ago for a phase-out of the 80-year-old 14(c) program and the concomitant phase-up of the systems changes necessary to allow people with disabilities to move into competitive integrated employment.'' *See* National Council on Disability, *From the New Deal to the Real Deal: Joining the Industries of the Future,* (Washington, DC: 2018).[14] On September 17, 2020, the United States Commission on Civil Rights (''USCCR'') published a report titled ''*Subminimum Wages: Impacts on the Civil Rights of People with Disabilities.*'' The USCCR recommended, ''Congress should repeal Section 14(c) with a planned phase-out period to allow transition among service providers and people with disabilities to alternative service models prioritizing competitive integrated employment.'' U.S. Commission on Civil Rights, *Subminimum Wages: Impacts on the Civil Rights of People with Disabilities,* (Washington, DC: 2020).[15]

*D. Biden Administration Actions During the First 100 Days*

The Biden administration has made it a priority to achieve a more inclusive country for individuals with disabilities. Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities, issued by President Biden on January 25, 2021, directs the entire Federal Government to pursue a comprehensive approach to advancing equity for all. 86 FR 7009 (January 25, 2021). It defines equity as the ''consistent and systematic fair, just, and impartial treatment of all individuals,'' including individuals with disabilities. *See* Executive Order 13986, section 2. Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors'', 86 FR 22835 (April 30, 2021), requires an increase in the minimum wage to $15.00 per hour beginning January 30, 2022, for ''workers performing on or in connection with covered Federal contracts,'' including the SCA. Executive Order 14026, section 8. Workers covered by the Executive order include workers employed under section 14(c) certificates. Executive Order 14026, section 2.

Under a Federal contract that is covered by both the SCA and Executive Order 14026, a worker performing contract work must be paid at the higher applicable wage rate. For example, for a worker with a disability performing work for an employer holding a section 14(c) certificate on a Federal contract that is covered by both the SCA and Executive Order 14026, where the SCA wage determination rate is $14.00 per hour and the worker's section 14(c) wage rate based on their productivity is $9.50 per hour, the worker would be due $15.00 per hour, which is the applicable wage rate under Executive Order 14026. The worker would also be due the full fringe benefits on the contract. The Commission will follow the Administration's updates and guidance issued pursuant to both Executive orders and will implement such changes as may be required.

On the legislative front, as part of the efforts to target workforce development opportunities in underserved communities, the Biden Administration's American Jobs Plan calls on Congress to eliminate subminimum wage provisions in section 14(c) of the FLSA and expand access to competitive, integrated employment opportunities and fair wages for workers with disabilities. *See* Fact Sheet: The American Jobs Plan, March 31, 2021.[16]

*E. Steps Taken By the AbilityOne Commission With Regard to Use of Subminimum Wages in AbilityOne Contracts*

In response to the growing recognition of the civil rights issues associated with the payment of subminimum wages, the Commission has taken steps to highlight its concerns with payment of such wages in AbilityOne Programs. As mentioned previously, in 2016, the Commission members issued a ''Declaration in Support of Minimum Wage for All People Who Are Blind or Have Significant Disabilities.'' The declaration directed ''all qualified nonprofit agencies participating in the AbilityOne Program to commit to, and begin (if not maintain), paying at least the Federal minimum wage, or state minimum wage if higher, to all employees who are blind or have significant disabilities working on AbilityOne contracts.'' [17]

Building on the 2016 Declaration, in February 2019, the Commission called on SourceAmerica to end the process of the payment of subminimum wages by its NPAs on AbilityOne contracts within three years. The Commission's letter acknowledged that ''[T]he imperative to end the payment of subminimum wages in the AbilityOne Program is growing in strength and momentum with every passing year. It is time to pay at least the Federal minimum wage, or state minimum wage if higher, to all employees who are blind or have

[13] *https://www.dol.gov/sites/dolgov/files/odep/topics/pdf/acicieid_final_report_9-8-16.pdf.*

[14] *https://ncd.gov/sites/default/files/Documents/NCD_Deal_Report_508.pdf.*

[15] *https://www.usccr.gov/files/2020-09-17-Subminimum-Wages-Report.pdf.*

[16] *https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan.*

[17] U.S. AbilityOne Commission, Declaration in Support of Minimum Wage for All People Who Are Blind or Have Significant Disabilities, March 16, 2016. *https://www.abilityone.gov/commission/documents/US%20AbilityOne%20Commission%20Declaration%2018March2016%20Final.pdf.*

significant disabilities working on AbilityOne contracts.'' [18]

In 2020, the Commission initiated a new practice to identify and report in its decision documents any planned use of subminimum wages related to products and services for additions to the AbilityOne Procurement List. Commission members are thus informed about the use of such wages before they decide whether to approve future AbilityOne contract opportunities.

Through these various actions, the Commission has been working towards bringing the AbilityOne Program into greater alignment with other disability employment laws, such as WIOA. The Commission now believes it is time to discontinue the practice of NPAs paying employees with disabilities subminimum wages using section 14(c) certificates on any new, extended, or renewed contract, with the exception of the exercise of options in an existing contract.

## IV. Specific Proposed Changes to the NPAs' Payment of Subminimum Wages Under Section 14(c) Certificates for AbilityOne Contracts

As set forth in the regulatory procedures section below, the Commission proposes to amend the qualification requirements for NPAs that participate in the AbilityOne Program, as set forth in 41 CFR 51–4.2 and 51–4.3. The Commission proposes to add a requirement for initial qualification that a NPA must provide a certification that it will not pay subminimum wages using special wage certificates authorized under section 14(c) of the FLSA to employees on any contract or subcontract awarded under the program. In addition, the Commission proposes to add a requirement for maintaining qualification that a NPA provide a certification that it will not pay subminimum wages using section 14(c) certificates to employees on contracts or subcontracts awarded under the program. This requirement would not apply to the exercise of any options on an existing contract up to the time of the contract's extension or renewal, except as otherwise required by law, such as on the exercise of an option on an existing contract covered by Executive Order 14026. The NPA must comply with the requirement at the time of the extension or renewal of an existing contract.

The Commission is seeking comments specifically on the following questions:

(1) Should the requirement that a qualified NPA not use section 14(c) certificates to pay subminimum wages on AbilityOne contracts apply to the renewal or extensions of contracts once they expire or only to new contracts? The Commission is interested in receiving data in support of any comment on this question.

(2) Should the requirement that a qualified NPA not use section 14(c) certificates to pay subminimum wages on AbilityOne contracts apply to the exercise of an option on an existing contract? The Commission is interested in receiving data in support of any comment on this question.

(3) What impact, if any, would the proposed regulatory change make to the receipt of social security benefits, such as Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) and attendant government health insurance, such as Medicare and Medicaid, to employees with disabilities? The Commission is also interested in receiving suggestions on how to address any possible adverse impacts that may be identified.

(4) How much time, if any, would be necessary for NPAs to meet the new requirements?

## V. Regulatory Procedures

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

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It is anticipated that this will be a ''significant regulatory action'' and, therefore, subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

A. Costs of Prohibiting the Use of Subminimum Wages Under Section 14(c) Certificates as a Qualification for Participation as a Nonprofit Agency in the AbilityOne Program

The Commission believes that the costs of requiring all new NPAs seeking to become qualified to participate in the AbilityOne Program and all existing NPAs wishing to maintain their qualification in the AbilityOne Program to certify that they will not pay subminimum wages under a section 14(c) certificate on contracts are not substantial and are outweighed by the benefits. NPAs participating in the AbilityOne Program are currently represented by two CNAs—NIB and SourceAmerica. NIB represents only one NPA that uses a section 14(c) certificate, but the NPA does not pay subminimum wages on its AbilityOne contracts.

The Commission does not currently collect data directly from the CNAs or the NPAs participating in the program regarding the NPAs' use of section 14(c) certificates on AbilityOne contracts or the number of employees with disabilities paid subminimum wages under those contracts or the amount of those wages. The Commission requested information from SourceAmerica on the use of section 14(c) certificates because SourceAmerica's NPAs voluntarily report this data to the CNA.[19] According to information provided by SourceAmerica, 160 of the 412 NPAs it represents (38 percent) hold and use section 14(c) certificates to pay subminimum wages on one or more AbilityOne contracts, as of the end of the first quarter of 2021.[20]

SourceAmerica reports that the number of NPA employees with disabilities working under a section 14(c) certificate decreased from 1,212 employees in the first quarter of 2020 to 674 employees in the first quarter of 2021.[21] AbilityOne NPAs employ approximately 42,000 individuals with disabilities, so the 674 employees with disabilities account for fewer than two percent of individuals with disabilities employed by AbilityOne NPAs.[22] Therefore, although the number of NPAs affected by this proposed rule may be 42 percent of the NPAs participating in the AbilityOne program, the actual number of employees with disabilities for whom these NPAs will have to increase wages is a small number of NPA employees. The costs of this rule will be further reduced because the NPAs holding service contracts that are covered by Executive Order 14026 will already have to pay at least $15.00/hour to employees with disabilities under AbilityOne service contracts pursuant to that Executive order and its

[18] AbilityOne Letter to Mr. Norman Lorentz, Chair of the SourceAmerica Board, February 19, 2019. *https://www.abilityone.gov/media_room/documents/Commission%20Chair%20Ltr%20to%20NIB%20&%20Sourceamerica%20Board%20Chairs%2020200323.pdf.*

[19] The Commission notes that because SourceAmerica data is self-reported by the NPAs and fluctuates by quarter, the data should be viewed as estimates and not exact figures.

[20] Statistics provided by SourceAmerica Interim Chief Executive Officer in a report to the Commission, posted at *https://www.abilityone.gov/commission/public_meeting_archive.html.*

[21] U.S. AbilityOne Commission Report to the President, March 2021, p. 22.

[22] Id., p. 2.

implementing regulations beginning January 30, 2022. Executive Order 14026, section 2(a)(1).

A. Benefits

Paying wages to AbilityOne employees that are equal to the wages paid to other employees without disabilities performing the same or similar work will provide both tangible and intangible benefits to employees with disabilities and to society at large.

The tangible financial benefits are the same that would accrue to any worker who receives a wage increase. Employees with significant disabilities who have been receiving subminimum wages for their work will now receive the Federal minimum wage, state minimum wage, or prevailing wage, depending on the applicable law. The result will be that such individuals will have an increased ability to make life decisions that require additional financial resources, such as where to live, what activities to engage in, and other basic aspects of life.

The intangible benefits are, by definition, harder to quantify, but those benefits will accrue both to individuals with significant disabilities and society at large. Paying employees with disabilities the same wage legally required to be paid to employees without disabilities doing the same or similar work sends a message of respect and a commitment to equity. Work provides structure, purpose, and a sense of meaningful contribution to family and community. That is why the AbilityOne Program is so important for individuals with significant disabilities. At the same time, in our society, the wages paid for work send a message about the value of that work. Paying equivalent wages to employees with and without disabilities who are capable of and are doing the same or similar work as employees without disabilities reinforces that such work is equally valued and that individuals with disabilities are fully included in our society.

The Commission recognizes that an increase in wages for employees with significant disabilities has the potential to trigger benefits reductions, depending on individual circumstances, for employees who are recipients of government benefits programs such as Social Security Disability Insurance (''SSDI'') or Supplemental Security Income (''SSI''), with attendant implications for coverage under Medicaid that often provides greater benefits than private health insurance. AbilityOne employees with disabilities will need assistance in assessing that possibility and in determining options to ensure that they do not lose important government benefits. The Commission expects to work closely with the CNAs and NPAs to assist in this effort. On balance, the Commission believes the overall benefits that the proposed rule will provide for AbilityOne employees with disabilities outweigh the potential benefits challenges that some AbilityOne employees will face.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The rule only applies to NPAs that propose to use or currently use certificates authorized by section 14(c) of the FLSA to pay subminimum wages on AbilityOne contracts. The majority of AbilityOne participating nonprofit agencies do not hold or use these special certificates.

Unfunded Mandates Reform

This proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, taken together, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

The proposed rule will require the Commission to collect information within its Annual Representations and Certifications regarding the certification not to pay subminimum wages under section 14(c) certificates to employees. The Commission collects similar information (overall wages) but does not currently or specifically collect a certification not to pay subminimum wages under section 14(c) certificates to employees.

The following is a summary of the need for and objectives of the proposed rule. A more complete discussion of various aspects of the proposed rule can be found in the preamble. The payment of subminimum wages under section 14(c) certificates to employees working on Federal contracts in the AbilityOne Program is not consistent with modern disability policy, diminishes the value of the work and the workers, and diminishes support for the program itself. The Commission proposes to add a new requirement for initial qualification and maintaining qualification for NPAs to participate in the AbilityOne Program. The requirement provides that for a NPA to qualify or maintain its qualification under the AbilityOne Program, the NPA must certify that on all contracts awarded, extended (other than through the exercise of an option), or renewed after the effective date of this rule, the NPA will not use a special wage certificate authorized under section 14(c) of the FLSA to pay subminimum wages to employees on any contract or subcontract awarded under the program.

Small Business Regulatory Enforcement Fairness Act of 1996

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

**Authority:** 41 U.S.C. 8503(d).

**List of Subjects in 41 CFR Part 51–4**

Government procurement, Individuals with disabilities, Reporting and recordkeeping requirements.

Accordingly, the Commission proposes to amend 41 CFR part 51–4 as set forth below:

## PART 51–4—NONPROFIT AGENCIES

■ 1. The authority citation for part 51–4 continues to read as follows:

**Authority:** 41 U.S.C. 46–48c.

■ 2. Amend § 51–4.2 by adding paragraph (a)(1)(iv) and revising paragraph (b) to read as follows:

**§ 51–4.2 Initial qualification.**

(a) * * *

(1) * * *

(iv) A certification that the nonprofit agency will not pay subminimum wages using special wage certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) to employees on any contract or subcontract awarded under the program.

* * * * *

(b) The Committee shall review the documents submitted and, if they are acceptable, notify the nonprofit agency by letter, with a copy to its central nonprofit agency, that the Committee has verified its nonprofit status and certification under paragraph (a)(1)(iv)

of this section under the Javits-Wagner-O'Day (JWOD) Act.

* * * * *

■ 3. Amend § 51–4.3 by adding paragraph (b)(10) to read as follows:

**§ 51–4.3 Maintaining qualification.**

* * * * *

(b) * * *

(10)(i) Except as provided in paragraph (b)(10)(ii) of this section, provide certification that the nonprofit agency will not pay subminimum wages using special wage certificates authorized under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) to employees on any contract or subcontract under the program.

(ii) The requirement of paragraph (a) of this section does not apply to the exercise of any options on an existing contract up to the time of the contract's extension or renewal, except as otherwise required by law.

* * * * *

**Michael R. Jurkowski,**

*Acting Director, Business Operations.*

[FR Doc. 2021–22118 Filed 10–8–21; 8:45 am]

**BILLING CODE 6353–01–P**

# Notices

Federal Register
Vol. 86, No. 194
Tuesday, October 12, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Eleven Point Resource Advisory Committee

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Eleven Point Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/mtnf/workingtogether/advisorycommittees.*

**DATES:** The virtual meeting will be held on October 23, 2021 at 10:00 a.m.–3:00 p.m., Central Daylight Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meeting will be held virtually via Microsoft Teams video/phone conference. Members of the public may click here to join the meeting via video conference or call in (audio only) 314–530–5560, Phone Conference ID: 968 037 567#.

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 upon request.

**FOR FURTHER INFORMATION CONTACT:** Sherri Schwenke, Designated Federal Officer (DFO), by phone at 573–341–7413 or email at *sherri.schwenke@usda.gov* or Theresa Davidson, RAC Coordinator, at 573–341–7499 or email at *theresa.davidson@usda.gov.*

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss project proposals;

2. Make funding reccomendations on Title II projects;

3. Approve meeting minutes; and

4. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by October 10, 2021, to be scheduled on the agenda. Anyone 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 for oral comments must be sent to Theresa Davidson, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, Missouri 65401 or by email to *theresa.davidson@usda.gov.*

*Meeting Accommodations:* Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodation. For access to 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: October 5, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021–22092 Filed 10–8–21; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Comprehensive Economic Development Strategies (CEDS)

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before December 13, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments by mail to Sydney Milner, Program Analyst, Performance, Research and National Technical Assistance Division, Economic Development Administration, U.S. Department of Commerce, via email at *smilner@eda.gov.* You may also submit comments to *PRAcomments@doc.gov.* Please reference OMB Control Number 0610–0093 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 Interested persons are invited to submit written comments by mail to Sydney Milner, Program Analyst, Performance, Research and National Technical Assistance Division, Economic Development Administration, U.S. Department of Commerce, (202) 365–4040, or via email at *smilner@eda.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Economic Development Administration (EDA) leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Guided by the basic principle that sustainable economic development should be locally-driven, EDA works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs. The Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 *et seq.*) is EDA's organic authority and is the primary legal authority under which EDA awards financial assistance. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, capacity building, and business development to attract private capital investments and new and better jobs to regions experiencing economic distress. Further information on EDA programs and financial assistance opportunities can be found at *www.eda.gov.*

To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. The purpose of this notice is to seek comments from the public and other Federal agencies on a request for an extension of an information collection related to a Comprehensive Economic Development Strategy (CEDS). A CEDS emerges from a continuing planning process developed and driven by a public sector planning organization by engaging a broad-based and diverse set of stakeholders to address the economic problems and potential of a region. The CEDS should include information about how and to what extent stakeholder input and support was solicited. Information on how the planning organization collaborated with its diverse set of stakeholders (including the public sector, private interests, non-profits, educational institutions, and community organizations) in the development of the CEDS should be included. In accordance with 13 CFR 303.7(b), a CEDS must contain a summary background, a SWOT (Strengths, Weaknesses, Opportunities, and Threats) Analysis, Strategic Direction/Action Plan, and an Evaluation Framework. In addition, the CEDS must incorporate the concept of economic resilience (*i.e.,* the ability to avoid, withstand, and recover from economic shifts, natural disasters, etc.). A CEDS is required for an eligible applicant to qualify for an EDA investment assistance under EDA's Public Works program, Economic Adjustment Assistance program, and certain planning programs, and is a prerequisite for a region's designation by EDA as an Economic Development District (see 13 CFR part 303, 13 CFR 305.2, and 13 CFR 307.2). EDA collects information under this information collection to ensure compliance with EDA's CEDS requirements.

This information collection is scheduled to expire on November 30, 2021. EDA is not proposing any changes to the current information collection request.

**II. Method of Collection**

CEDS are collected primarily through electronic submissions but may also be collected through paper submission.

**III. Data**

*OMB Control Number:* 0610–0093.

*Form Number(s):* None.

*Type of Review:* Regular submission; Extension of a currently approved collection.

*Affected Public:* (1) Cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities; (2) states; (3) institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes.

*Estimated Number of Respondents:* 527.

*Estimated Time per Response:* 480 hours for the initial CEDS for a District organization or other planning organization funded by EDA; 160 hours for the CEDS revision required at least every 5 years from an EDA-funded District or other planning organization; 40 hours per CEDS update and performance report; and 40 hours per applicant for EDA Public Works or Economic Adjustment Assistance with a project deemed by EDA to merit further consideration that is not located in an EDA-funded District.

*Estimated Total Annual Burden Hours:* 31,640.

| Type of response | Number of responses | Hours per response | Total estimated time (hours) |
|---|---|---|---|
| Initial CEDS | 3 | 480 hours/initial CEDS | 1,440 |
| Revised CEDS | 77 | 160 hours/revised CEDS | 12,320 |
| CEDS Updates/Performance Reports | 385 | 40 hours/report | 15,400 |
| CEDS by applicants not in EDA-funded District | 62 | 40 hours | 2,480 |
| Total | 527 | | 31,640 |

*Estimated Total Annual Cost to Public:* $1,841,131 (cost assumes application of U.S. Bureau of Labor Statistics first quarter 2021 mean hourly employer costs for employee compensation for professional and related occupations of $58.19).

*Respondent's Obligation:* Mandatory.

*Legal Authority:* The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*).

**IV. Request for Comments**

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before

including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–21779 Filed 10–8–21; 8:45 am]

**BILLING CODE 3510–34–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–847]**

### Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2019–2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that the producers/exporters of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from Mexico subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) September 1, 2019, through August 31, 2020. We invite all interested parties to comment on these preliminary results.

**DATES:** Applicable October 12, 2021.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger or William Miller, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3906, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On October 30, 2020, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of HWR pipes and tubes from Mexico.[1] This review covers 11 producers and exporters of the subject merchandise. Commerce selected two companies, Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey S.A. de C.V. (Prolamsa), for individual examination. The producers and/or exporters not selected for individual examination are listed in the ''Preliminary Results of the Review'' section of this notice.

On May 5, 2021, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), Commerce extended the time limit for issuing the preliminary results of this administrative review to September 30, 2021.[2]

#### Scope of the Order [3]

The products covered by the *Order* are heavy walled rectangular welded steel pipes and tubes from Mexico.[4] Products subject to the *Order* are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 7306.61.1000. Subject merchandise may also be classified under 7306.61.3000. Although the HTSUS subheading and ASTM specification are provided for convenience and for customs purposes, the written product description remains dispositive.

#### Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On January 28, 2021, Nucor Tubular Products Inc. (Nucor), timely withdrew its requests for an administrative review on the following nine companies: Arco Metal S.A. de C.V.; Forza Steel S.A. de C.V; Industrias Monterrey, S.A. de C.V.; Perfiles y Herrajes LM S.A. de C.V.; PYTCO S.A. de C.V.; Regiomontana de Perfiles y Tubos S.A. de C.V.; Ternium S.A. de C.V.; Tuberia Nacional S.A de C.V.; and Tuberias Procarsa S.A. de C.V. No other party requested a review of these nine companies. Accordingly, we are rescinding this review, in part, with respect to these companies, pursuant to 19 CFR 351.213(d)(1).

#### Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

#### Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the period September 1, 2019, through August 31, 2020:

| Producers/exporters | Weighted-average dumping margin (percent) |
|---|---|
| Maquilacero S.A. de C.V | 0.74 |
| Productos Laminados de Monterrey S.A. de C.V | 1.33 |

#### Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[5] Interested parties may submit case briefs or other written comments to Commerce no later than 30 days after the date of publication of this notice.[6] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the deadline for filing

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 68840 (October 30, 2020).

[2] *See* Memorandum, ''Extension of Deadline for Preliminary Results of the 2019–2020 Antidumping Duty Administrative Review,'' dated May 5, 2021.

[3] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders,* 81 FR 62865, 62867 (September 13, 2016) (*Order*).

[4] For a complete description of the scope of the *Order, see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c).

case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Case and rebuttal briefs should be filed using ACCESS.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.[10] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[11]

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.[12]

## Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[13]

Pursuant to 19 CFR 351.212(b)(1), where Maquilacero and Prolamsa reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where Prolamsa did not report entered value, we calculated the entered value in order to determine the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Maquilacero or Prolamsa for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[14]

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a). If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For the companies for which we have rescinded this administrative review, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP no earlier than 41 days after the date of publication of this notice in the **Federal Register**.

## Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.91 percent, the all-others rate established in the LTFV investigation.[15] These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

## Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: September 30, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2021–22114 Filed 10–8–21; 8:45 am]

**BILLING CODE 3510–DS–P**

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.303.

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.310(d).

[12] *See* section 751(a)(3)(A) of the Act.

[13] *See* 19 CFR 351.212(b).

[14] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Order.*

## 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; Southeast Region Family of Forms

**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 to assess the impact of 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 by December 13, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *adrienne.thomas@noaa.gov.* Please reference OMB Control Number ''0648–0016'' 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 Rich Malinowski, National Marine Fisheries Service (NMFS), Sustainable Fisheries Division, 263 13th Avenue S, St. Petersburg, Florida, 33701, phone: (727) 824–5305, email: *rich.malinowski@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

This request is for an extension and revision of a current information collection.

Participants in most federally managed fisheries in the NMFS Southeast Region are currently required to keep and submit catch and effort logbooks from their fishing trips. A subset of fishermen on these vessels also provides information on the species and quantities of fish, shellfish, marine turtles, and marine mammals that are caught and discarded or have interacted with the fishing gear. A subset of fishermen on these vessels also provides information about dockside prices, trip operating costs, and annual fixed costs. An intercept survey for vessels with Federal charter vessel/headboat permits is designed to support and validate the electronic logbooks.

The data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations. Interaction reports are needed for fishery management planning and to help protect endangered species and marine mammals. Price and cost data will be used in analyses of the economic effects of proposed and existing regulations.

Regulatory Amendment 29 effective July 15, 2020 would require at least one descending device to be on board and ready for use on commercial, for-hire, and private recreational vessels while fishing for or possessing snapper-grouper species in the South Atlantic. Most recently the Descend Act was passed, which added a new section 321 to the Magnuson-Stevens Fishery Conservation and Management Act. This requires commercial and recreational fishermen to possess a venting tool or descending device that is rigged and ready for use when fishing for reef fish in the Gulf of Mexico Exclusive Economic Zone.

Descending devices increase survivability from barotrauma, which is injury caused by internal gas expansion when reeled up from depth. In addition to being asked to report the number of fish released respondents would be asked to report the method used to release fish as part of their current logbook submissions. The purpose of asking respondents to distinguish between fish releases without descending devices, fish released with gas bladders vented, and fish released with descending devices is to provide data needed by NMFS to accurately account for fishing mortality when performing stock assessments.

#### II. Method of Collection

The information is submitted on paper forms and electronic transmissions. Logbooks are completed daily and submitted on either a per trip, weekly, or monthly basis, depending on the fishery. Fixed costs are submitted on an annual basis. Other information is submitted on a per trip basis.

For the proposed intercept survey, information would be collected through in-person interviews at verified landing locations.

#### III. Data

*OMB Control Number:* 0648–0016.

*Form Number(s):* None.

*Type of Review:* Regular submission—extension and revision of a current information collection.

*Affected Public:* Businesses or other for-profit organizations; individuals.

*Estimated Number of Respondents:* 6,867.

*Estimated Time per Response:* Annual fixed-cost report, 45 minutes; discard logbook, 15 minutes; headboat, charter vessel, golden crab, reef fish-mackerel, economic cost per trip, wreckfish, 10 minutes; no-fishing report for golden crab, reef fish-mackerel, charter vessels, and wreckfish, 2 minutes; installation of a vessel monitoring unit, 5 hours; landing location request and power-down exemption request, 5 minutes; trip declaration, 2 minutes; and proposed intercept survey, 15 minutes.

*Estimated Total Annual Burden Hours:* 69,431.

*Estimated Total Annual Cost to Public:* $1,816,314 in record-keeping or reporting cost.

*Respondent's Obligation:* Mandatory.

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

#### IV. Request for Comments

NMFS is soliciting public comments 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 the time and cost burden estimates 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. NMFS will include or summarize each comment in our request to OMB to approve this information collection request. 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, NMFS cannot guarantee that will occur.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–22148 Filed 10–8–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB500]**

### Endangered Species; File Nos. 25870, 19641, 20528, 23200, and 25864

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

**ACTION:** Notice; receipt of applications for permits and permit modifications.

**SUMMARY:** Notice is hereby given that four applicants have applied in due form for permits or permit modifications for scientific research to take Atlantic (*Acipenser oxyrinchus*) and shortnose (*A. brevirostrum*) sturgeon, and one researcher has applied for a permit to take smalltooth sawfish (*Pristis pectinata*) for purposes of scientific research.

**DATES:** Written, telefaxed, or email comments must be received on or before November 12, 2021.

**ADDRESSES:** The applications and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting the appropriate File No. from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include the appropriate File No. 25870, 19641–05, 20528–08, 23200–04, and 25864 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a similar written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on the requested application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Erin Markin, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permits and permit modifications are requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 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).

*File No. 25870:* Harold M. Brundage, Environmental Research and Consulting, Inc., 325 Market Street, Lewes, DE 19958, requests a permit to conduct scientific research on Atlantic and shortnose sturgeon in freshwater and estuary areas of the Delaware River. Research objectives include study of abundance, recruitment, temporal-spatial distributions, reproduction, and habitat use in the lower non-tidal Delaware River, tidal Delaware River, and Delaware Bay. Up to 100 adult/sub-adult and 230 juvenile shortnose sturgeon and 100 adult/sub-adult and 230 juvenile Atlantic sturgeon would be captured by gill net or trawl, measured, weighed, biologically sampled (tissue), marked (passive integrated transponder (PIT) and Floy/T-bar tags), and photographed/videoed, annually, prior to release. Sub-sets of Atlantic and shortnose sturgeon may be anesthetized and implanted with acoustic transmitters or tethered in a nylon sock for hydro-acoustic testing. The researcher anticipates a total of one incidental mortality of each sturgeon species annually. The permit would be valid for up to 10 years from the date of issuance.

*File No. 19641–05:* The Connecticut Department of Energy and Environmental Protection (Tom Savoy, Responsible Party), P.O. Box 719, Old Lyme, CT 06371, requests a modification to Permit No. 19641–02. The subject modification to Permit No. 19641–02, issued on June 16, 2020 (85 FR 43820; July 20, 2020) authorizes researchers to determine the presence, status, health, habitat use, and movements of adult, sub-adult, and juvenile Atlantic and shortnose sturgeon in the Connecticut River. Researchers may capture sturgeon using gill nets and trawls, measure, weigh, PIT tag, tissue sample, anesthetize, acoustically tag, fin ray sample, gastric lavage, and photograph individuals prior to release. Early life stages (ELS) of both Atlantic and shortnose sturgeon may be lethally sampled to document the occurrence of spawning in the river. During research activities, unintentional mortality of up to one juvenile and adult/sub-adult life stage of each species may occur, annually. Due to an rapidly expanding population of shortnose sturgeon documented in the Connecticut River, the Permit Holder requests authorization to increase take numbers authorized for capture and recapture (*i.e.,* from 500 to 1,000) of adult and sub-adult shortnose sturgeon, annually. The permit is valid through March 31, 2027.

*File No. 20528–08:* The South Carolina Department of Natural Resources (Responsible Party: Bill Post), 217 Fort Johnson Road, Charleston, SC 29412, proposes to modify Permit No. 20528–02. The subject modification to Permit No. 20528–02, issued on May 28, 2020 (85 FR 35637; June 11, 2020), authorizes researchers to conduct research on Atlantic and shortnose sturgeon to determine their presence, status, health, habitat use, and movements in South Carolina waters. Researchers may use gill nets to capture Atlantic and shortnose sturgeon to measure, weigh, PIT tag, tissue sample, acoustically tag, fin ray sample, gonad biopsy, and photograph prior to release. Early life stages of each species may be lethally sampled to document occurrence of spawning in systems. Up to two sturgeon of each species may unintentionally die annually during sampling activities. The permit holder requests authorization to (1) add the objective to perform enhancement activities that include the capture and transport of 20 adult shortnose sturgeon from the Cooper River to the Santee River, annually; (2) increase the number of adult/subadult shortnose sturgeon for capture, mark (dart, PIT), biologically sample (tissue), measure, and weigh from 35 to 200 annually in the Cooper River; (3) increase the annual number of adult/subadult and juvenile Atlantic sturgeon from 20 to 100 and 60 to 150, respectively, for capture, mark (dart, PIT), biologically sample(tissue), measure, and weigh in the Santee River; (4) increase the annual number of adult/subadult and juvenile shortnose sturgeon from 15 to 200 and 15 to 150, respectively, for capture, mark (dart, PIT), biologically sample(tissue), measure, and weigh in the Santee River; (5) increase the annual number of adult/subadult and juvenile shortnose sturgeon from 75 to 200 and 5 to 150, respectively, for capture, mark (PIT), biologically sample(tissue), measure, and weigh in Lakes Moultrie and Marion and associated tributaries; and (6) increase the annual number of juvenile Atlantic sturgeon for capture, anesthetize, acoustically tag, biologically sample (tissue), weigh, measure, and photograph/video from 10 to 20, annually, in the Winyah Bay system. The permit is valid through March 31, 2027.

*File No. 23200–04:* The University of North Carolina, Wilmington

(Responsible Party: Frederick Scharf, Ph.D.), 601 South College Road, Wilmington, NC 28403, proposes to modify Permit No. 23200. The permit, originally issued on January 31, 2020 (85 FR 7978; February 12, 2020), authorizes researchers to conduct scientific research on adult, sub-adult, and juvenile Atlantic and shortnose sturgeon to determine their abundance, distribution, habitat use, and migration dynamics in the coastal rivers and estuaries of North Carolina basins (Cape Fear, Neuse, Tar/Pamlico, Roanoke/Chowan). Researchers may capture Atlantic and shortnose sturgeon using gill nets, trammel nets, or trawls, measure, weigh, mark (PIT, Floy), biologically sample (tissue), anesthetize, acoustically tag, and photograph/video sturgeon prior to release. The permit holder requests authorization to (1) increase the number of adult/subadult Atlantic sturgeon for capture, anesthetize, acoustically tag, mark (PIT, Floy), biologically sample (tissue), measure, weigh, and photograph/video from 20 to 40, annually, in the Cape Fear, Neuse, and Tar/Pamlico River systems, and (2) conduct sampling of Atlantic sturgeon ELS using egg mats and collect up to 100 ELS annually in each authorized system. The permit is valid through January 25, 2025.

*File No. 25864:* The Florida Fish and Wildlife Conservation Commission (Responsible Party, Gregg Poulakis, Ph.D.), Fish and Wildlife Research Institute, 585 Prineville Street, Port Charlotte, FL 33954, requests a permit to take smalltooth sawfish (U.S. Distinct Population Segment) in Florida waters and elsewhere within the species' range. The applicant is proposing to conduct studies, monitoring smalltooth sawfish to develop conservation and protective measures and ensure the species' recovery. Researchers are requesting to capture adult and sub-adult and juvenile animals and then measure, weigh, tag (*i.e.,* internal or external acoustic, satellite, archival, PIT, and rototag), sample (*i.e.,* genetic, blood, muscle biopsy), and photograph prior to release. The applicant also requests to have access to salvaged animals and parts taken throughout the species range and to import and export parts and samples for analysis, archival and future study. The permit would be valid for 10 years from the date of issuance.

Dated: October 6, 2021.

**Julia Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021–22103 Filed 10–8–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Western and Central Pacific Fisheries Convention Vessel Information Family of Forms

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 21, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic & Atmospheric Administration (NOAA), Commerce.

*Title:* Western and Central Pacific Fisheries Convention Vessel Information Family of Forms.

*OMB Control Number:* 0648–0595.

*Form Number(s):* None.

*Type of Request:* Regular (extension of a currently approved collection).

*Number of Respondents:* 225.

*Average Hours per Response:* Western and Central Pacific Fisheries Commission Area Endorsement Application: 60 minutes; Foreign Exclusive Economic Zone (EEZ) Form: 90 minutes; International Maritime Organization (IMO) number application: 30 minutes.

*Total Annual Burden Hours:* 43.

*Needs and Uses:* The Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; 16 U.S.C. 6901 *et seq.*) and U.S. implementing regulations (50 CFR 300 Subpart O) authorize that all member States maintain and provide to the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) a list of vessels flagged by the member State and (1) authorized by the member State to be used for fishing for highly migratory fish stocks (HMS) on the high seas in the WCPFC Area, or (2) authorized by other States to be used for fishing for HMS in their areas of jurisdiction in the WCPFC Area, and to maintain and provide for each vessel on that list certain information on its characteristics and its owner and operator.

Vessels in the first category already provide most of the required information under existing laws and regulations. All such vessels must be documented by the United States Coast Guard (USCG) or be state-registered and must hold a valid High Seas Fishing Permit (issued under the authority of the High Seas Fishing Compliance Act (HSFCA). Under these existing documentation/registration and permitting requirements, the vessel owner or operator must comply with information collection requirements that fulfill most of the needs under the WCPFCIA. This information collection requirement serves to collect the few pieces of information required under the WCPFCIA that are not already collected via existing mechanisms, and a form customized for this category of vessels is used.

Vessels in the second category already provide information as part of the USCG documentation or State registration processes, but such vessels do not need to hold High Seas Fishing Permits (unless they also fish on the high seas), so they will not necessarily be submitting the information collected via that permitting process. This information collection requirement serves to collect the pieces of information required under the WCPFCIA that are not already collected via existing mechanisms, and a form customized for this category of vessels is used.

Under a 2013 Commission decision, an additional piece of information that the United States must provide to the Commission for both categories of vessels (but only for those whose tonnage is at least 100 gross register tons (GRT) or 100 gross tons (GT)) is the vessel's IMO number. An IMO number, also known as an IMO ship identification number, is a unique number issued for a ship or vessel under the ship identification number scheme established by the International Maritime Organization. Once issued, an IMO number will remain with the vessel for its life, regardless of changes to the vessel's name, flag, ownership, or other attributes. This information collection requirement serves to collect information based on a decision of the Commission made under Conservation and Management Measure (CMM) 2013–10, which requires each member of the Commission to ensure that IMO numbers are issued for the two above

listed categories of vessels. To satisfy this WCPFC requirement, NMFS requires that the owner of each subject vessel request and obtain an IMO number, which they can do by submitting certain information about the vessel and its ownership and management to the administrator of the IMO ship identification number scheme, which is a private third party not associated with the United States government or any other government. Although NMFS does not collect this information directly, the requirement to submit the information to the third party is covered by this information collection.

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Frequency:* The information included in both the *WCPFC Area Endorsement* application and *Foreign EEZ form* is collected once every five years. The information collected to obtain an IMO number is a one-time collection.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* WCPFCIA; 16 U.S.C. 6901 *et seq.*

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0595.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–22096 Filed 10–8–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; North Pacific Observer Program

**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 December 13, 2021.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0318 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 Gabrielle Aberle, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Regional Office, is requesting renewal of a currently approved information collection that contains requirements for the North Pacific Observer Program (Observer Program). A slight revision is requested to change the title of the collection from ''Alaska Observer Program'' to ''North Pacific Observer Program.''

Section 313 of the Magnuson-Stevens Act (16 U.S.C. 1862) authorizes the North Pacific Fishery Management Council (Council), in consultation with NMFS, to prepare a fishery research plan for the purpose of stationing observers and electronic monitoring (EM) systems to collect data necessary for the conservation, management, and scientific understanding of the commercial groundfish and Pacific halibut fisheries of the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) management areas. The Observer Program is implemented by regulations at subpart E of 50 CFR part 679, which authorize the deployment of observers and EM to collect information necessary for the conservation and management of the BSAI and GOA groundfish and halibut fisheries. Under the Observer Program, observers and EM systems collect fishery-dependent information used to estimate total catch and interactions with protected species. Managers use this data to manage groundfish and prohibited species catch within established limits and to document and reduce fishery interactions with protected species. Scientists use this data to assess fish stocks, provide data for fisheries and ecosystem research and fishing fleet behavior, assess marine mammal interactions with fishing gear, and characterize fishing impacts on habitat.

All vessels and processors that participate in federally managed or parallel groundfish and halibut fisheries off Alaska (except catcher vessels delivering unsorted codends to a mothership) are subject to Observer Program requirements and assigned to one of two categories: (1) The full observer coverage category, where vessels and processors obtain observer coverage by contracting directly with observer providers; or (2) the partial coverage category, where NMFS, in consultation with the Council determines when and where observer coverage is needed. Some vessels and processors may be in full coverage for part of the year and partial coverage at other times of the year depending on the observer coverage requirements for specific fisheries. Funds for deploying observers on vessels in the partial coverage category are provided through a system of fees based on the gross ex-vessel value of retained groundfish and halibut. This observer fee is assessed on all landings by vessels that are not otherwise in full coverage. The observer fee is approved under OMB Control Number 0648–0711.

Information in this collection is submitted by observer provider companies and owners and operators of vessels and processors subject to Observer Program requirements. Information submitted by owners and operators includes information on owner identification, vessels, observer coverage category, deck safety, the EM system, fishing trips, and fishing

operations. Information submitted by observer provider companies includes information on ownership and operations; observers and observer candidates; observer deployment; insurance coverage; contracts with observers, vessels, and processors; costs for observer services; and other information including possible observer harassment, prohibited actions, safety concerns, observer illness or injury preventing the observer from completing duties, and any information, allegation, or reports regarding observer conflict of interest or breach of the standards of behavior. Observers, observer provider companies, and industry may submit information on improving observer data quality and resolving observer sampling issues.

More information on the Observer Program is provided on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/alaska/fisheries-observers/north-pacific-observer-program.*

**II. Method of Collection**

Methods of submittal consist of online web applications, email, email attachments, verbal communication by telephone or in person, and on paper by mail or fax. The Observer Declare and Deploy System (ODDS) is an internet-based system that is used by vessel owners and operators in the partial coverage category. ODDS is available online at *https://apps-afsc.fisheries.noaa.gov/ords/f?p=140:1* or by phone at 1–855–747–6377. Copies of observer coverage category request forms are available on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/resource/tool-app/observer-deploy-and-declare-system-odds.*

**III. Data**

*OMB Control Number:* 0648–0318.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Individuals or households; Business or other for-profit organizations.

*Estimated Number of Respondents:* 875.

*Estimated Time per Response:* Observer Notification: 2 minutes; Industry Request for Assistance in Improving Observer Data Quality Issues: 30 minutes; Pre-cruise meeting notification: 5 minutes; Catcher/processor request to be placed in Partial Observer Coverage: 30 minutes; Request to be placed in the Full Observer Coverage Category: 5 minutes; Request to be placed in or removed from the EM selection pool: 5 minutes; Observer Declare and Deploy System (ODDS) Log a fishing trip: 15 minutes; Deck Safety Plan—Initial Year: 12 hours; Deck Safety Plan—Annual Renewal: 1 hour; Deck Sorting Safety Meeting: 15 minutes; Vessel Monitoring Plan: 48 hours; Closing EM trips in ODDS: 5 minutes; Submit EM Data to NMFS: 1 hour; Observer Provider Permit Application: 60 hours.

*Estimated Total Annual Burden Hours:* 16,603 hours.

*Estimated Total Annual Cost to Public:* $1,185.

*Respondent's Obligation:* Mandatory; Required to Obtain or Retain Benefits.

*Legal Authority:* Magnuson-Stevens Fishery Conservation and Management 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. 2021–22142 Filed 10–8–21; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF ENERGY

### High Energy Physics Advisory Panel

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of open virtual meeting.

**SUMMARY:** This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, November 1, 2021, 9:00 a.m. to 6:00 p.m.

Tuesday, November 2, 2021, 8:30 a.m. to 4:00 p.m.

**ADDRESSES:** This meeting is open to the public. This meeting will be held digitally via Zoom. Information to participate can be found on the website closer to the meeting date at *https://science.osti.gov/hep/hepap/meetings/.*

**FOR FURTHER INFORMATION CONTACT:** John Kogut, Executive Secretary; High Energy Physics Advisory Panel (HEPAP); U.S. Department of Energy; Office of Science; SC–35/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–1298; Email: *John.Kogut@science.doe.gov.*

**SUPPLEMENTARY INFORMATION:** *Purpose of the Committee:* To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

**Tentative Agenda**

- Discussion of Department of Energy High Energy Physics Program
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

*Public Participation:* The meeting is open to the public. A webcast of this meeting will be available. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, (301) 903–1298 or by email at: *John.Kogut@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The

Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available on the High Energy Physics Advisory Panel website: *https://science.osti.gov/hep/hepap/meetings/.*

Signed in Washington, DC, on October 6, 2021.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2021–22149 Filed 10–8–21; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Department of Energy hereby publishes a notice of open meeting of the Secretary of Energy Advisory Board (SEAB). Due to the COVID–19 pandemic, this meeting will be held virtually.

**DATES:** Thursday, October 28, 2021; 1:00 p.m.–2:00 p.m.

**ADDRESSES:** Virtual meeting. To receive the meeting login information, please contact the Board's Designated Federal Officer (DFO) at the address or email listed below. Due to remote working conditions, email is preferred.

**FOR FURTHER INFORMATION CONTACT:** Christopher Lawrence, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; email: *seab@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

*Purpose of the Meeting:* This is the inaugural meeting of Secretary Jennifer M. Granholm's SEAB.

*Tentative Agenda:* The meeting will start at 1:00 p.m. on October 28th. The tentative meeting agenda includes: Introduction of SEAB's members, remarks from the Secretary, and remarks from the SEAB Chair. The meeting will conclude at 2:00 p.m.

*Public Participation:* The meeting is open to the public. Individuals who would like to attend must RSVP to Christopher Lawrence no later than 5:00 p.m. on Wednesday, October 27, 2021, by email at: *seab@hq.doe.gov.*

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, *seab@hq.doe.gov,* no later than 5:00 p.m. on Wednesday, October 27, 2021.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christopher Lawrence, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to: *seab@hq.doe.gov.*

*Minutes:* The minutes of the meeting will be available on the SEAB website or by contacting Mr. Lawrence. He may be reached at the above postal address or email address, or by visiting SEAB's website at *www.energy.gov/seab.*

Signed in Washington, DC, on October 6, 2021.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2021–22107 Filed 10–8–21; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Nevada

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of open virtual meeting.

**SUMMARY:** This notice announces an online virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

**DATES:** Wednesday, November 10, 2021; 4:00 p.m.–7:00 p.m.

**ADDRESSES:** Online Virtual Meeting: To attend, please send an email to: *nssab@emcbc.doe.gov* by no later than 4:00 p.m. PT, on Monday, November 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Barbara Ulmer, Nevada Site Specific Advisory Board (NSSAB) Administrator, by Phone: (702) 523–0894; or Email: *nssab@emcbc.doe.gov.*

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

1. Briefing on Corrective Action Unit 114, Area 25 Engine Maintenance, Assembly, and Disassembly (EMAD) Facility Disposal Options—Work Plan Item #3.

*Public Participation:* The online virtual meeting is open to the public. Written statements may be filed with the Board via email either before or after the meeting as there will not be opportunities for live public comment during this online virtual meeting. Public comments received by no later than 4:00 p.m. PT on Monday, November 8, 2021, will be read aloud during the virtual meeting. Comments will be accepted after the meeting, by no later than 4:00 p.m. PT on Friday, November 19, 2021. Please submit comments to *nssab@emcbc.doe.gov.* The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individual wishing to submit public comments should email them as directed above.

*Minutes:* Minutes will be available by writing or calling Barbara Ulmer, NSSAB Administrator, U.S. Department of Energy, EM Nevada Program, 100 North City Parkway, Suite 1750, Las Vegas, NV 89106; Phone: (702) 523–0894. Minutes will also be available at the following website: *http://www.nnss.gov/nssab/pages/MM_FY22.html.*

Signed in Washington, DC, on October 6, 2021.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2021–22141 Filed 10–8–21; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP22–1–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* § 4(d) Rate Filing: EPCR Semi-Annual Adjustment—Fall 2021 to be effective 11/1/2021.

*Filed Date:* 10/1/21.

*Accession Number:* 20211001–5000.

*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–2–000.
*Applicants:* Guardian Pipeline, L.L.C.
*Description:* § 4(d) Rate Filing: Transporter Use Gas Annual Adjustment—Fall 2021 to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5001.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–3–000.
*Applicants:* Midwestern Gas Transmission Company.
*Description:* § 4(d) Rate Filing: Annual Load Management Service Cost Reconciliation Adjustment—2021 to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5002.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–4–000.
*Applicants:* Viking Gas Transmission Company.
*Description:* § 4(d) Rate Filing: Semi-Annual Fuel and Losses Retention Adjustment—Winter 2021 Rate to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5003.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–5–000.
*Applicants:* Gulf South Pipeline Company, LLC.
*Description:* § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation 54301 to Exelon 54328) to be effective 10/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5009.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–6–000.
*Applicants:* Gulf South Pipeline Company, LLC.
*Description:* § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Marathon 51753, 51743 releases eff 10–1–2021) to be effective 10/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5010.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–7–000.
*Applicants:* Gulf South Pipeline Company, LLC.
*Description:* § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Aethon III and Aethon United releases eff 10–1–2021) to be effective 10/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5011.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–8–000.
*Applicants:* Eastern Gas Transmission and Storage, Inc.
*Description:* § 4(d) Rate Filing: EGTS—October 1, 2021 Nonconforming Service Agreement to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5020.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–9–000.
*Applicants:* Portland Natural Gas Transmission System.
*Description:* § 4(d) Rate Filing: WXP Phase II Agreements Filing to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5023.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–10–000.
*Applicants:* Vector Pipeline L.P.
*Description:* § 4(d) Rate Filing: Negotiated Rate Filing—Enbridge (EGD and UGL) to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5027.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–11–000.
*Applicants:* Cimarron River Pipeline, LLC.
*Description:* § 4(d) Rate Filing: Fuel Tracker 2021—Winter Season Rates to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5028.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–12–000.
*Applicants:* Equitrans, L.P.
*Description:* § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—10/1/2021 to be effective 10/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5030.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–13–000.
*Applicants:* Transcontinental Gas Pipe Line Company, LLC.
*Description:* § 4(d) Rate Filing: Cash Out Surcharge Annual Update Filing to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5047.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–14–000.
*Applicants:* Texas Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: 2021 Fuel Tracker Filing to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5059.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–15–000.
*Applicants:* NEXUS Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rates—Releases eff 10–01–2021 to be effective 10/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5063.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–16–000.
*Applicants:* Enable Mississippi River Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rate Filing—10.1.2021 to be effective 10/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5064.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–17–000.
*Applicants:* NEXUS Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rates—Amended CNX 860004 eff 10–01–21 to be effective 10/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5066.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–18–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* § 4(d) Rate Filing: Negotiated Rates—Releases eff 10–01–2021 to be effective 10/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5072.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–19–000.
*Applicants:* Spire STL Pipeline LLC.
*Description:* Compliance filing: Spire STL Pipeline LAUF Filing to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5157.
*Comment Date:* 5 p.m. ET 10/13/21.

*Docket Numbers:* RP22–20–000.
*Applicants:* MoGas Pipeline LLC.
*Description:* § 4(d) Rate Filing: MoGas Spire Negotiated Rate Agreement Filing to be effective 11/1/2021.
*Filed Date:* 10/1/21.
*Accession Number:* 20211001–5167.
*Comment Date:* 5 p.m. ET 10/13/21.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22125 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP21–14–000]**

### Adelphia Gateway, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Marcus Hook Electric Compression Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Marcus Hook Electric Compression Project, proposed by Adelphia Gateway, LLC (Adelphia) in the above-referenced docket. Adelphia requests authorization to construct and operate certain natural gas compression facilities in order to increase the certificated capacity of Adelphia's pipeline system to provide an additional 16,500 dekatherms per day of firm transportation service for a new shipper on Adelphia's system.

The final EIS responds to comments that were received on the Commission's February 9, 2021 Environmental Assessment (EA) and June 17, 2021 draft EIS [1] and discloses downstream greenhouse gas emissions for the Project. With the exception of climate change impacts, the FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in the EIS, would not result in significant environmental impacts. FERC staff continues to be unable to determine the significance of the Project's contribution to climate change.

The final EIS incorporates and appends the above referenced EA, which addressed the potential environmental effects of the construction and operation of the following Project facilities at the existing Marcus Hook Compressor Station in Delaware County, Pennsylvania:

- An electric motor-driven 3,000-horsepower (hp) compressor unit;
- one horizontal process gas cooler with two 25-hp electric-driven motors;
- two variable frequency drives; and
- a motor control center assembly to control the electric compressor engine from a central location.

The Commission mailed a copy of the Notice of Availability of the Final Environmental Impact Statement for the Marcus Hook Electric Compressor Station Project to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS 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, excluding the last three digits (*i.e.* CP21–14). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

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*) 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: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22123 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

[1] The Project's EA is available on FERC's eLibrary under accession no. 20210209–3004 and the draft EIS is available under accession no. 20210617–3051.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP22–22–000.
*Applicants:* Northwest Pipeline LLC.
*Description:* § 4(d) Rate Filing: Non-Conforming Service Agreement—Avista & Citadel to be effective 11/4/2021.
*Filed Date:* 10/4/21.
*Accession Number:* 20211004–5015.
*Comment Date:* 5 p.m. ET 10/18/21.

*Docket Numbers:* RP22–24–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* § 4(d) Rate Filing: Negotiated Rates—CEP Venture 911757 Eff 11–08–2021 to be effective 11/8/2021.
*Filed Date:* 10/4/21.
*Accession Number:* 20211004–5092.
*Comment Date:* 5 p.m. ET 10/18/21.

*Docket Numbers:* RP22–25–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* Compliance filing: Cameron Extension Project (CP19–512) In-Service Compliance Filing to be effective 11/8/2021.
*Filed Date:* 10/4/21.
*Accession Number:* 20211004–5093.
*Comment Date:* 5 p.m. ET 10/18/21.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22119 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–14–000]**

### Darby Solar, 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 Darby Solar, 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 October 25, 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* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22128 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–13–000]**

### Regan Solar, 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 Regan Solar, 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 October 25, 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* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22124 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER21–2655–001.

*Applicants:* Southwestern Public Service Company.

*Description:* Tariff Amendment: SPS-Llano-Second Amnd-Deferral Action-101–0.0.1 to be effective 12/31/9998.

*Filed Date:* 10/5/21.

*Accession Number:* 20211005–5061.

*Comment Date:* 5 p.m. ET 10/26/21.

*Docket Numbers:* ER22–42–000.

*Applicants:* DTE Electric Company.

*Description:* § 205(d) Rate Filing: Amendment to Rate Schedule 28 to be effective 7/1/2021.

*Filed Date:* 10/5/21.

*Accession Number:* 20211005–5001.

*Comment Date:* 5 p.m. ET 10/26/21.

*Docket Numbers:* ER22–43–000.

*Applicants:* American Electric Power Service Corporation, Indiana Michigan Power Company, AEP Indiana Michigan Transmission Company, Inc., PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits one FA re: SA No. 5677 to be effective 12/5/2021.

*Filed Date:* 10/5/21.

*Accession Number:* 20211005–5011.

*Comment Date:* 5 p.m. ET 10/26/21.

*Docket Numbers:* ER22–44–000.

*Applicants:* Maverick Wind Project Holdings LLC.

*Description:* Tariff Amendment: Notice of Cancellation of Market-Based Rate Tariff to be effective 12/5/2021.

*Filed Date:* 10/5/21.

*Accession Number:* 20211005–5023.

*Comment Date:* 5 p.m. ET 10/26/21.

*Docket Numbers:* ER22–45–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* § 205(d) Rate Filing: 2021–10–05 EIM Implementation Agreement Cancellation—BANC to be effective 12/5/2021.

*Filed Date:* 10/5/21.

*Accession Number:* 20211005–5077.

*Comment Date:* 5 p.m. ET 10/26/21.

*Docket Numbers:* ER22–46–000.

*Applicants:* Parkway Generation Essex, LLC.

*Description:* Baseline eTariff Filing: Market-Based Rate Application and Request for Expedited Action to be effective 12/1/2021.

*Filed Date:* 10/5/21.

*Accession Number:* 20211005–5081.

*Comment Date:* 5 p.m. ET 10/26/21.

*Docket Numbers:* ER22–47–000.

*Applicants:* Southwestern Electric Power Company.

*Description:* § 205(d) Rate Filing: SWEPCO–ETEC Loops Operations Services Agreement to be effective 9/9/2021.

*Filed Date:* 10/5/21.

*Accession Number:* 20211005–5087.

*Comment Date:* 5 p.m. ET 10/26/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22130 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–11–000]**

### Janis Solar, 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 Janis Solar, 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 October 25, 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* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22120 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–7–000]**

### Branscomb Solar, 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 Branscomb Solar, 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 October 25, 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* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22122 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–9–000]**

### Grissom Solar, 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 Grissom Solar, 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 October 25, 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* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22121 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Effectiveness of Exempt Wholesale Generator Status

| | Docket No. |
|---|---|
| Rainbow Energy Center, LLC | EG21–194–000 |
| Tulare Solar Center, LLC | EG21–195–000 |
| Boulder Solar III, LLC | EG21–196–000 |
| Ho'ohana Solar 1, LLC | EG21–197–000 |
| Glacier Sands Wind Power, LLC | EG21–198–000 |
| Kahana Solar, LLC | EG21–199–000 |
| Arlington Energy Center II, LLC | EG21–200–000 |
| Barbers Point Solar, LLC | EG21–201–000 |
| Paeahu Solar LLC | EG21–202–000 |
| Hale Kuawehi Solar LLC | EG21–203–000 |
| Minco Wind Energy III, LLC | EG21–204–000 |
| Crossett Power Management LLC | EG21–205–000 |
| Lund Hill Solar, LLC | EG21–206–000 |
| Dichotomy Power Maine LLC | EG21–207–000 |
| Arlington Solar, LLC | EG21–208–000 |
| Martinsville OnSite Generation, LLC. | EG21–209–000 |
| South River OnSite Generation, LLC. | EG21–210–000 |

Take notice that during the month of September 2021, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2020).

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22129 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER22–12–000]**

### Puckett Solar, 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 Puckett Solar, 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 October 25, 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* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22126 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP21–498–000]**

### Columbia Gas Transmission, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on September 21, 2021, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, TX 77002–2700, filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, requesting authorization to construct and operate its Virginia Electrification Project (VEP or Project) in Louisa, Goochland, and Prince George Counties, Virginia. The proposed project consists of modifications at two existing compressor stations, expansion of one point of receipt, and a certificated horsepower increase at a third existing compressor station to create 35,000 dekatherms per day (Dth/d) of incremental mainline capacity on Columbia's pipeline system. The incremental capacity created by the project will allow for open access firm transportation service to multiple points of delivery in Columbia's Market Area 33 and Market Area 34 in southeast Virginia, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, or by phone at (832) 320–5477, or by email at *david_alonzo@tcenergy.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

**Public Participation**

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on October 26, 2021.

**Comments**

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before October 26, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (CP21–498–000) in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the

[1] 18 CFR (Code of Federal Regulations) 157.9.

Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP21–498–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

**Interventions**

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is October 26, 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 the your interest in the proceeding. [For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene.] For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number (CP21–498–000) in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number (CP21–498–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: 700 Louisiana Street, Suite 1300, Houston, Texas, 77002–2700, or at *david_alonzo@tcenergy.com* . Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed[7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] 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.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

*Intervention Deadline:* 5:00 p.m. Eastern Time on October 26, 2021.

Dated: October 5, 2021.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2021–22127 Filed 10–8–21; 8:45 am]

**BILLING CODE 6717–01–P**

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OLEM–2018–0102, FRL–8935–01–OLEM]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; RCRA Expanded Public Participation, EPA ICR No. 1688.09, OMB Control No. 2050–0149

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), RCRA Expanded Public Participation (EPA ICR No. 1688.09, OMB Control No. 2050–0149) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through May 31, 2021. 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.

**DATES:** Comments must be submitted on or before December 13, 2021.

**ADDRESSES:** Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0102, to: (1) EPA online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0453; fax number: email address: *vyas.peggy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room is closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone and webform. For further information about the EPA's public docket, Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* Section 7004(b) of RCRA gives EPA broad authority to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under RCRA. In addition, the statute specifies certain public notices (*i.e.,* radio, newspaper, and a letter to relevant agencies) that EPA must provide before issuing any RCRA permit. The statute also establishes a process by which the public can dispute a permit and request a public hearing to discuss it. EPA carries out much of its RCRA public involvement at 40 *CFR* Parts 124 and 270.

*Form Numbers:* None.

*Respondents/affected entities:* Entities potentially affected by this action are Businesses and other for-profit.

*Respondent's obligation to respond:* Mandatory (RCRA 7004(b)).

*Estimated number of respondents:* 46.

*Frequency of response:* On occasion.

*Total estimated burden:* 4,375 Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $326,263 (per year), which includes $321,833 annualized labor and $4,430 annualized capital and operation & maintenance costs.

*Changes in Estimates:* The burden hours are likely to stay substantially the same.

Dated: October 5, 2021.

**Carolyn Hoskinson,**

*Director, Office of Resource Conservation and Recovery.*

[FR Doc. 2021–22098 Filed 10–8–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–RCRA–2007–0932, FRL–8936–01–OLEM]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Management Standards for Hazardous Waste Pharmaceuticals Title of ICR, EPA ICR No. 2486.03, OMB Control No. 2050–0212

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Management Standards for Hazardous Waste Pharmaceuticals (EPA ICR No. 2486.03, OMB Control No. 2050–0212) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through May 31, 2022. 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.

**DATES:** Comments must be submitted on or before December 13, 2021.

**ADDRESSES:** Submit your comments, referencing by Docket ID No. EPA–HQ–

RCRA–2007–0932, to: (1) EPA online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Kristin Fitzgerald, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0512; email address: *fitzgerald.kristin@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov*. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room is closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone and webform. For further information about the EPA's public docket, Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets*. The telephone number for the Docket Center is 202–566–1744.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* Some pharmaceuticals are regulated as hazardous waste under the Resource Conservation and Recovery Act (RCRA) when discarded. This final rule added regulations for the management of hazardous waste pharmaceuticals by healthcare facilities and reverse distributors. Healthcare facilities (for both humans and animals) and reverse distributors now manage their hazardous waste pharmaceuticals under a new set of sector-specific standards in lieu of the existing hazardous waste generator regulations. These regulations are found in 40 CFR 266, Subpart P, and are mandatory. The new requirements include labeling containers holding non-creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals with the words ''Hazardous Waste Pharmaceuticals''. Healthcare facilities and reverse distributors must also track or manage rejected shipments by sending a copy of the manifest to the designated facility that returned or rejected the shipment. Additionally, healthcare facilities and reverse distributors must submit exception reports for a missing copy of a manifest. Reverse distributors are required to amend their contingency plan under 40 CFR 262 Subpart M. A reverse distributor must submit an unauthorized hazardous waste report if it receives waste it is not authorized to receive.

*Form Numbers:* None.

*Respondents/affected entities:* Entities potentially affected by this action are the private sector.

*Respondent's obligation to respond:* Mandatory (RCRA Section 3001).

*Estimated number of respondents:* 13,373.

*Frequency of response:* Annual.

*Total estimated burden:* 43,577 hours. Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $2,543,409, which includes $2,543,409 annualized labor costs and $0 annualized capital or O&M costs.

*Changes in Estimates:* The burden hours are expected to decrease as some of the burden associated with the rule have been incorporated into other existing ICRs.

Dated: October 5, 2021.

**Carolyn Hoskinson,**

*Director, Office of Resource Conservation and Recovery.*

[FR Doc. 2021–22097 Filed 10–8–21; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[WC Docket No. 17–97; DA 21–1103; FR ID 50347]**

### Call Authentication Trust Anchor

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** In this document, the Wireline Competition Bureau (Bureau) addresses a statutory obligation under the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act relating to the Commission's caller ID authentication rules. Specifically, the Bureau seeks comment on STIR/SHAKEN implementation extensions granted by the Commission and associated burdens and barriers to the implementation of STIR/SHAKEN.

**DATES:** Comments are due on or before November 12, 2021; reply comments are due on or before November 26, 2021.

**ADDRESSES:** Pursuant to sections 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 in this document. Comments and reply 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). Interested parties may file comments or reply comments, identified by WC Docket No. 17–97 by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: *https://www.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, 35 FCC Rcd 2788 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

*Ex Parte Rules.* This 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 presenters 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 section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules 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.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Michael Nemcik, Competition Policy Division, Wireline Competition Bureau, at (202) 418–2343 or by email at *Michael.Nemcik@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Bureau's Public Notice seeking comment on STIR/SHAKEN implementation extensions granted by the Commission and associated burdens and barriers to the implementation of STIR/SHAKEN in WC Docket No. 17–97, DA 21–1103, released on September 3, 2021. The full text of this document is available for public inspection at the following internet address: *https://docs.fcc.gov/public/attachments/DA-21-1103A1.pdf.* To request materials in accessible formats for people with disabilities (*e.g.* braille, large print, electronic files, audio format, etc.), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), or (202) 418–0432 (TTY).

## Synopsis

When Congress directed the Commission to mandate implementation of STIR/SHAKEN in the TRACED Act, it also required the Commission to assess burdens and barriers to implementation, and gave the Commission discretion to extend compliance with the implementation mandate upon a public finding of undue hardship. The Commission performed this assessment and granted three categorical extensions of the STIR/SHAKEN mandate on the basis of undue hardship: (1) Small voice service providers; (2) voice service providers unable to obtain the ''token'' necessary to participate in STIR/SHAKEN; and (3) services scheduled for section 214 discontinuance.

The TRACED Act further requires the Commission to assess burdens and barriers to implementation ''as appropriate'' after that initial assessment, and directs the Commission to, ''not less frequently than annually after the first [extension] is granted,'' reevaluate and potentially revise any extensions granted on the basis of undue hardship. It requires the Commission to issue a public notice explaining ''why such [extension] remains necessary'' and ''when the Commission expects to achieve the goal of full participation'' in caller ID authentication. To comply with these obligations in the TRACED Act, the Commission directed the Bureau to annually assess burdens and barriers to implementation and reevaluate the Commission's granted extensions and revise or extend them as necessary. In its directions to the Bureau, the Commission permitted the Bureau to further extend an extension to which voice service providers are already subject, but prohibited us from terminating an extension prior to the extension's originally set end date. The Commission did not permit us to grant extensions to any voice service providers or services not already subject to one; should we further extend a granted extension, we are permitted to decrease, but not expand, the scope of entities entitled to that extension based on our assessment of burdens and barriers.

We now seek comment in turn on the Commission's granted extensions and associated burdens and barriers to the implementation of STIR/SHAKEN.

*Small Voice Service Provider Extension.* We seek comment on the Commission's extension for small voice service providers. The Commission granted a two-year extension for small voice service providers, defined as ''a provider that has 100,000 or fewer voice service subscriber lines.'' The Commission found that this extension was appropriate because small voice service providers may face substantial costs to implement STIR/SHAKEN—in addition to resource constraints—and that they confront unique equipment availability issues. In May, the Commission released a Third Further Notice of Proposed Rulemaking proposing to shorten the extension for small voice service providers that originate an especially large number of calls by one year. It did so due to new evidence indicating that certain small voice service providers are originating a high and increasing share of illegal robocalls relative to their subscriber base.

We seek comment on burdens and barriers to small voice service provider implementation and whether we should revise or extend their extension. Have the burdens or barriers affecting small providers that were originally discussed in the *Second Caller ID Authentication Report and Order* changed since adoption, and if so how? Have new burdens or barriers to implementation emerged that affect small providers? Should the Bureau extend the extension beyond its current June 30, 2023 date? If so, why, and is there a reason to extend it at this time and not in next year's annual review? Alternatively, is the extension no longer necessary and should we recommend that the Commission terminate it? If so, why?

How should the Commission's recent *Third Further Notice* and any subsequent order inform or impact our reevaluation of the small voice service provider extension? How close are small voice service providers to ''full participation,'' and what steps, if any, could the Commission take to promote that goal?

*Extension for Voice Service Providers That Cannot Obtain a SPC Token.* We seek comment on the Commission's extension for voice service providers that cannot obtain the Service Provider Code (SPC) token necessary to participate in STIR/SHAKEN. The Commission granted voice service providers that are incapable of obtaining a SPC token due to Governance Authority policy an extension until they are capable of obtaining said token. The Commission granted this extension because ''it is impossible for a voice service provider to participate in STIR/SHAKEN without access to [a SPC token] and because some voice service providers are unable to obtain [one] at this time.''

In May, the Governance Authority revised the STI–GA Token Access Policy to enable token access by some voice service providers previously unable to receive a token. How has this change impacted the barrier presented by an inability to access a SPC token? Has it resolved the token access barrier? Does this change affect the need for the implementation extension and, if so, how? Does the extension remain necessary? Conversely, is this extension no longer necessary and should we recommend it be terminated or revised by the Commission going forward? If so, why? Finally, how does token access affect the TRACED Act goal of full participation in caller ID authentication? Are there steps the Commission could take regarding token access to better promote full participation?

*Extension for Services Scheduled for Section 214 Discontinuance.* We seek comment on the Commission's extension for services scheduled for section 214 discontinuance. The Commission granted an extension to services which are subject to a pending application for permanent discontinuance of service filed as of June 30, 2021 for one year, until June 30, 2022. Under this extension, a voice service provider has until June 30, 2022, to either discontinue the service subject to the application or, alternatively, implement STIR/SHAKEN on that service. The Commission granted this extension to ''obviat[e] the need to upgrade components of a voice service provider's network that will be sunset.'' Is there any reason we should lengthen this extension and give affected voice service providers additional time, beyond June 30, 2022, to either discontinue the service or implement STIR/SHAKEN? Is it reasonable for a voice service provider to take longer than one year to complete discontinuance and, if so, how much additional time is appropriate? Alternatively, is a protracted discontinuance evidence of ''bad faith'' and should we decline to grant any additional time before a voice service provider is obligated to choose between discontinuance and STIR/SHAKEN implementation? To account for bad faith filers while acknowledging potential reasonable delays, should we lengthen the extension but limit the scope of entities entitled to any further extension? Do services scheduled for 214 discontinuance meaningfully impact the goal of full participation in caller ID authentication?

Federal Communications Commission.

**Pamela Arluk,**

*Chief, Competition Policy Division.*

[FR Doc. 2021–22106 Filed 10–8–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID 52205]**

### Deletion of Items From September 30, 2021 Open Meeting

September 30, 2021.

The following items have been adopted by the Commission and deleted from the list of items scheduled for consideration at the Thursday, September 30, 2021, Open Meeting. These items were previously listed in the Commission's Notice of Thursday, September 23, 2021.

| | | |
|---|---|---|
| 3 | OFFICE OF ENGINEERING & TECHNOLOGY. | TITLE: Authorizing 6 GHz Band Automated Frequency Coordination Systems (ET Docket No. 21–352).<br>SUMMARY: The Commission will consider a Public Notice beginning the process for authorizing Automated Frequency Coordination Systems to govern the operation of standard-power devices in the 6 GHz band (5.925–7.125 GHz). |
| 4 | OFFICE OF ENGINEERING & TECHNOLOGY. | TITLE: Spectrum Requirements for the Internet of Things (ET Docket No. 21–353)<br>SUMMARY: The Commission will consider a Notice of Inquiry seeking comment on current and future spectrum needs to enable better connectivity relating to the Internet of Things (IoT). |

* * * * *

The meeting will be webcast with open captioning at: *www.fcc.gov/live*. Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live*.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2021–22110 Filed 10–8–21; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0719; FR ID 52030]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction

Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before December 13, 2021 If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0719.

*Title:* Quarterly Report of Local Exchange Carriers Listing Payphone Automatic Number Identifications (ANIs).

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 400 respondents; 1,600 responses.

*Estimated Time per Response:* 3.5 hours (8 hours for the initial submission; 2 hours per subsequent submission—for an average of 3.5 hours per response).

*Frequency of Response:* Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226 and 276 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 5,600 hours.

*Total Annual Cost:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* The Commission is not requesting respondents to submit confidential information to the Commission. If the respondents wish confidential treatment of their information, they may request confidential treatment under 47 CFR 0.459 of the Commission's Rules.

*Needs and Uses:* The Commission adopted rules and policies governing the payphone industry under section 276(b)(1)(A) of the Telecommunications Act of 1996 (the Act) and established ''a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call.'' Pursuant to this mandate, and as required by section 64.1310(d) of the Commission's rules, Local Exchange Carriers (LECs) must provide to carriers required to pay compensation pursuant to section 64.1300(a), a quarterly report listing payphone ANIs. Without provision of this report, resolution of disputed ANIs would be rendered very difficult. Carriers would not be able to discern which ANIs pertain to payphones and therefore would not be able to ascertain which dial-around calls were originated by payphones for compensation purposes. There would be no way to guard against possible fraud. Without this collection, lengthy investigations would be necessary to verify claims. The report allows carriers to determine which dial-around calls are made from payphones. The information must be provided to third parties. The requirement would be used to ensure that LECs and the carriers required to pay compensation pursuant to 47 CFR 64.1300(a) of the Commission's rules comply with their obligations under the Telecommunications Act of 1996.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2021–22111 Filed 10–8–21; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Supplemental Evidence and Data Request on Telehealth for Women

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Request for supplemental evidence and data submissions.

**SUMMARY:** The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Telehealth for Women,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

**DATES:** *Submission Deadline* on or before November 12, 2021.

**ADDRESSES:**

*Email submissions: epc@ahrq.hhs.gov.*

*Print submissions:*

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Telehealth for Women.* AHRQ is conducting this technical brief pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Telehealth for Women,* including those that describe adverse

events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/telehealth-women/protocol*.

This is to notify the public that the EPC Program would find the following information on *Telehealth for Women* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

*The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.*

**Key Questions (KQs)**

*KQ 1:* For conditions related to women's reproductive health (including family planning, contraception, and sexually transmitted infection counseling):

(a) What is the evidence of effectiveness of telehealth as a strategy for delivery of health care services for reproductive health?

(b) What are patient preferences and patient choice in the context of telehealth utilization?

(c) What is the effectiveness of patient engagement strategies for telehealth?

(d) What is the impact of COVID–19 on the effectiveness of telehealth and patient engagement?

(e) What are the barriers to and facilitators of telehealth for women's reproductive health in low-resources settings and populations?

(f) What are the harms of telehealth for women's reproductive health?

*KQ 2:* For interpersonal violence (including intimate partner violence and domestic violence):

(a) What is the evidence of effectiveness of telehealth as a strategy for screening and interventions for interpersonal violence?

(b) What are patient preferences and patient choice in the context of telehealth utilization?

(c) What is the effectiveness of patient engagement strategies for telehealth?

(d) What is the impact of COVID–19 on the effectiveness of telehealth and patient engagement?

(e) What are the barriers to and facilitators of telehealth for screening and interventions for interpersonal violence in low-resources settings and populations?

(f) What are the harms of telehealth for screening and interventions for interpersonal violence?

*Contextual Question:* What guidelines, recommendations or best practices have been developed for the design and use of telehealth and virtual health technologies for women for any clinical conditions, including on patient preferences, patient choice, patient engagement, and implementation in low-resource settings?

**PICOTS (Population, Intervention, Comparator, Outcome, Timing, Setting)**

Tables 1 and 2 shows full eligibility criteria to identify studies that address the KQs.

TABLE 1—PICOTS AND CORRESPONDING INCLUSION AND EXCLUSION CRITERIA

| | Include | Exclude |
|---|---|---|
| Population | Adolescent and adult women (age 13 years and older), including those who are pregnant, eligible for screening, counseling, or treatment for:<br>KQ 1: Reproductive health services: (Family planning, contraception, STI counseling).<br>KQ 2: Interpersonal violence. | • Men.<br>• Children under 13. |
| Interventions | KQ1: Reproductive health services:<br>• Family planning (preconception counseling and care).<br>• Contraception (screening, counseling, provision, and follow-up care).<br>• STI counseling.<br>KQ2: Interpersonal violence (intimate partner violence, domestic violence).<br>KQ 1a, 1b, 1e, 1f, 2a, 2b, 2e, and 2f: Telehealth and virtual health, defined as:<br>• Any two-way telehealth strategy intended to supplement or replace traditional in-person care (*e.g.,* virtual visits, remote monitoring, mobile applications, at-home use of medical devices, use of a facilitator; use of patient-portal or electronic medical record).<br>• Must include direct contact between a clinician or other provider and a patient or group of patients.<br>• Telehealth can be synchronous or asynchronous.<br>• Interventions may be comprised of a single telehealth strategy or may be delivered as telehealth packages, comprised of multiple telehealth strategies. | • KQ1: Non-FDA-approved contraceptive devices, medications, and other methods that are not currently in clinical use in the U.S. as of 2021.<br>• Telehealth clinician-to-clinician consults.<br>• Interventions without bidirectional communication between the patient and the health care team (*e.g.,* one way email or text messages).<br>• Peer-led interventions |

TABLE 1—PICOTS AND CORRESPONDING INCLUSION AND EXCLUSION CRITERIA—Continued

| | Include | Exclude |
|---|---|---|
| | KQ 1c, 1d, 2c, and 2d: Patient engagement strategies using telehealth and virtual health. | (no clinician involvement).<br>• Maternity Care. |
| Comparators | • For effectiveness and harms (KQ 1a, 1c, 1d, 1f, 2a, 2c, 2d, 2f): Usual or in-person care or traditional care models (care provided without telehealth); telehealth + in-person care vs. in-person care alone (augmentation).<br>• For barriers, facilitators, preferences (KQ 1b, 1e, 2b, 2e): Studies with or without comparison groups (*i.e.,* patients' perceptions are based on comparisons of their own previous experiences).<br>• KQ 1d and 2d: During COVID–19: Clinical services before and after COVID–19 pandemic. | No comparison for effectiveness and harms. |
| Outcomes | See Table 2. | • Outcomes not relevant to the KQs.<br>• Cost analyses.<br>• Patient knowledge/education. |
| Clinical Setting | • Home, outpatient, primary care, or primary care-referable.<br>• Contact can be simultaneous (synchronous) or communicating across time (asynchronous).<br>• Individuals providing care include a broad range of health care workers (physicians, nurses, pharmacists, counselors, etc.).<br>• No geographic restriction: Can be urban, suburban, or rural. | Studies of health care services delivered outside of health care settings (*e.g.,* social services, churches, schools, prisons). |
| Country Setting | Research conducted in the U.S. or in populations similar to U.S. populations, with services and interventions applicable to U.S. practice (*i.e.,* countries with a United Nations HDI of ''very high''). | Countries with significantly different health care systems and fewer resources (*e.g.,* low-income countries); not rated 'very high' on the 2018 HDI. |
| Study types and designs | • RCTs.<br>• A best evidence approach will be used for considering inclusion of observational studies (non-RCT with some type of comparison):<br>○ Comparative studies including trial and observational studies, including prospective and retrospective cohort studies and before-after studies (*i.e.,* natural experiments).<br>○ Qualitative studies that evaluate preferences, barriers/facilitators.<br>○ Studies that specifically note that they were conducted during the COVID–19 pandemic (*e.g.,* either specify they are assessing effects of COVID–19, or compare practices before and after March 2020) will be included. Studies with data that overlap this period will be considered only if results are stratified by pre-post pandemic. | Case reports, case series. |
| Language | English language. | Non-English. |

Abbreviations: COVID–19 = novel coronavirus; FDA = U.S. Food and Drug Administration; HDI = human development index rating; KQ = key question; RCT = randomized controlled trial; STI = sexually transmitted infection; U.S. = United States.

TABLE 2—TABLE OF OUTCOMES

| Category | Included outcomes |
|---|---|
| All conditions/services | KQ 1a and 2a:<br>• Clinical effectiveness, patient health outcomes (see specific outcomes).<br>• Quality of life, function.<br>KQ 1b, 1c, 1d, 2b, 2c, and 2d: Measures or descriptions of patient satisfaction, patient engagement and activation, patient choice.<br>KQ 1e and 2e: Measures or descriptions of barriers and facilitators in low-resource settings.<br>• Patient-reported outcomes: Patient empowerment, engagement, and satisfaction.<br>• Measures of health care access, equity, and utilization.<br>○ Rates of screening and followup; adherence; no-shows.<br>○ Utilization of services.<br>• KQ 1f and 2f: Harms (*e.g.,* missed diagnosis, incorrect diagnosis, overdiagnosis, delay in treatment, increase in redundant testing or in low-value care, mental health outcomes, stress, anxiety, loss to followup). |
| Family planning | • Desired pregnancy; unwanted/unintended pregnancy.<br>• Interpregnancy interval.<br>• Resource utilization. |
| Contraception | • Reduced unintended or unwanted pregnancy and births.<br>• Increased contraceptive use/uptake.<br>• Change in contraceptive method.<br>• Reproductive health outcomes.<br>• Harms associated with contraceptive care (*e.g.,* complications of contraceptive methods; delayed method start; unable to start method of choice; reproductive coercion). |
| STI counseling | • Health outcomes: |

TABLE 2—TABLE OF OUTCOMES—Continued

| Category | Included outcomes |
|---|---|
| IPV | ○ STI incidence (based on testing/biologic confirmation).<br>○ STI complications.<br>• Behavioral outcomes:<br>○ Changes in STI risk behaviors (*e.g.,* multiple sexual partners, concurrent sexual partners, sexual partners with high STI risk, unprotected sexual intercourse or contact, sex while intoxicated with alcohol or other substances, sex in exchange for money or drugs).<br>○ Changes in protective behaviors (*e.g.,* sexual abstinence; mutual monogamy; delayed initiation of intercourse or age of sexual debut; use of condoms, other barrier methods, or chemical barriers; or other changes in sexual behavior).<br>• STI harms:<br>○ Health care avoidance.<br>○ Psychological harms (*e.g.,* anxiety, shame, guilt, stigma).<br>• Health outcomes:<br>○ Reduced exposure to IPV as measured by a validated instrument (*e.g.,* Community Composite Scale), self-report frequency of abuse (*e.g.,* number of physical/sexual assaults), or discontinuation of an unsafe relationship.<br>○ Physical morbidity caused by IPV, including acute physical trauma (*e.g.,* fractures, dislocations).<br>○ Mental health morbidity caused by IPV, including acute mental morbidity (*e.g.,* stress, nightmares) and chronic mental health conditions (*e.g.,* posttraumatic stress disorder, anxiety, depression).<br>○ Sexual trauma, unintended pregnancy, pregnancy loss, and sexually transmitted infections.<br>○ Health care utilization attributed to physical or mental effects of IPV (*e.g.,* rates of emergency room visits).<br>○ Social isolation.<br>• Harms:<br>○ Increased abuse or other forms of retaliation; and other reported harms of screening or identification. |

Abbreviations: IPV = interpersonal violence; KQ = key question; STI = sexually transmitted infections.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2021–22074 Filed 10–8–21; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Savannah River Site in Aiken, South Carolina, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

**FOR FURTHER INFORMATION CONTACT:** Grady Calhoun, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 513–533–6800. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

**SUPPLEMENTARY INFORMATION:** On August 18, 2021, as provided for under 42 U.S.C. 7384*l*(14)(C), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All construction trade employees of Department of Energy subcontractors [excluding employees of the following prime contractors who worked at the Savannah River Site in Aiken, South Carolina, during the specified time periods: E. I. du Pont de Nemours and Company, October 1, 1972, through March 31, 1989; and Westinghouse Savannah River Company, April 1, 1989, through December 31, 1990], who worked at the Savannah River Site from October 1, 1972, through December 31, 1990, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on September 17, 2021. Therefore, beginning on September 17, 2021, members of this class of employees, defined as reported in this notice, became members of the SEC.

*Authority:* 42 U.S.C. 7384q(b). 42 U.S.C. 7384*l*(14)(C).

**John J. Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2021–22132 Filed 10–8–21; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2021–N–0966]**

### Closer to Zero Action Plan: Impacts of Toxic Element Exposure and Nutrition at Different Crucial Developmental Stages; Public Meeting; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the following virtual public meeting entitled ''Closer to Zero Action Plan: Impacts of Toxic Element Exposure and Nutrition at Different Crucial Developmental Stages.'' The purpose of the public meeting is to discuss the scope of the Closer to Zero action plan as it relates to the impacts of toxic element exposure and nutrition at different crucial developmental stages, including discussion of the key nutrients in food for growth and development, foods commonly consumed by babies and young children, and exposure risks of toxic elements.

**DATES:** The public meeting will be held on November 18, 2021, from 10 a.m. to 4 p.m. Eastern Time. FDA is

establishing a docket for public comment on this meeting. The docket number is FDA–2021–N–0966. The docket will close on December 20, 2021. Submit electronic or written comments on this public meeting by December 20, 2021. See ''Participating in the Public Meeting'' in the **SUPPLEMENTARY INFORMATION** section of this document for closing dates for advanced registration and other information regarding meeting participation.

**ADDRESSES:** Due to the impact of the COVID–19 pandemic, this meeting will be held virtually to help protect the public and limit the spread of the virus.

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 December 20, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 20, 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–2021–N–0966 for ''Closer to Zero Action Plan: Impacts of Toxic Element Exposure and Nutrition at Different Crucial Developmental Stages.'' 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.'' We will review this copy, including the claimed confidential information, in our 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.

**FOR FURTHER INFORMATION CONTACT:** *For general questions about the public meeting or for special accommodations due to disability:* Juanita Yates, Center for Food Safety and Applied Nutrition (HFS–009), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1731, *Juanita.Yates@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On April 8, 2021, FDA announced the Closer to Zero (C2Z) action plan (available at: *https://www.fda.gov/food/metals-and-your-food/closer-zero-action-plan-baby-foods#Introduction*) for reducing exposure to toxic elements from foods for babies and young children (see ''FDA Releases Action Plan for Reducing Exposure to Toxic Elements from Foods for Babies, Young Children,'' available at: *https://www.fda.gov/news-events/press-announcements/fda-releases-action-plan-reducing-exposure-toxic-elements-foods-babies-young-children*). We have prioritized reducing exposure to toxic elements from foods for babies and young children because their smaller body sizes and rapid development make them more vulnerable to the harmful effects of these toxic elements. Exposure to toxic elements, including arsenic, lead, cadmium, and mercury, from foods depends on the levels of the elements in the food and the amount of the food consumed. Nutrient exposures can interact with the uptake of these elements and the nutrient status of children can modulate the effects of these elements. The levels of toxic elements in foods depend on many factors, including:

- The levels of these elements in the air, water, and soil used to grow the crops, which vary depending on factors such as geographical differences and past or current contamination,
- The type of food crop and how much ''uptake'' there is of specific elements from the environment, and
- Industrial, manufacturing, and agricultural processes.

The C2Z action plan sets forth our approach to reducing exposure to toxic elements in foods commonly eaten by babies and young children to the lowest possible levels. FDA's goal is to reduce the levels of arsenic, lead, cadmium, and mercury in these foods to the greatest extent possible without setting levels that are not currently feasible and without reducing the availability of nutritious, affordable foods on which

many families rely. The C2Z action plan outlines a multi-phase, science-based iterative approach to achieving our goal of getting levels of toxic elements in food closer to zero over time.

Closer to Zero includes research and evaluation of changes in dietary exposures to toxic elements, setting action levels (recommended limits of toxic elements in foods that can be achieved by industry and progressively lowered as appropriate), encouraging adoption of best practices by industry, and monitoring progress.

## II. Purpose and Format of the Public Meeting

We are holding our first C2Z action plan meeting to get stakeholder input regarding the plan's scope. We will discuss foods commonly consumed by babies and young children, the impacts of toxic element exposures at different crucial developmental stages, and the interaction of nutrients and nutrient status as co-exposures to lead, arsenic, cadmium, and mercury on growth and development.

We will outline the C2Z plan including FDA's four-stage approach for continual improvement and additional work related to levels of toxic elements in food. Stakeholder panels will provide perspectives on the various issues needed to fulfill the C2Z plan. We will provide an opportunity for questions as well as an opportunity for open public comment. We expect this meeting to be the first of several regarding the C2Z action plan.

## III. Participating in the Public Meeting

*Registration:* Registration is free and early registration is recommended. To register to attend the public meeting on ''Closer to Zero Action Plan: Impacts of Toxic Element Exposure and Nutrition at Different Crucial Developmental Stages,'' by webcast, please register at *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops* by November 12, 2021 at 11:59 p.m. Eastern Time. Registrants will receive confirmation when they have been accepted and will be provided the webcast link.

Table 1 provides information on participation in the public meetings.

TABLE 1—INFORMATION ON PARTICIPATING IN THE PUBLIC MEETING AND ON SUBMITTING COMMENTS TO CLOSER TO ZERO ACTION PLAN: IMPACTS OF TOXIC ELEMENT EXPOSURE AND NUTRITION AT DIFFERENT CRUCIAL DEVELOPMENTAL STAGES FOR BABIES AND YOUNG CHILDREN

| Activity | Date | Electronic address | Other information |
|---|---|---|---|
| Public Meeting | November 18, 2021 | Webcast information will be provided prior to the meeting. | Webcast will have closed captioning. |
| Advance Registration | By November 12, 2021. | *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops*. | There is no registration fee for the public meeting. Early registration is recommended. |
| Request to make oral presentation. | By November 1, 2021 | *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops*. | |
| Notice confirming opportunity to make oral presentation. | By November 4, 2021 | | An FDA representative will confirm the opportunity to make an oral presentation and will provide the approximate time on the public meeting agenda to do so. |
| Submitting either electronic or written comments. | Submit comments by December 20, 2021. | *https://www.regulations.gov* | See **ADDRESSES** for addition information on submitting comments. |

*Requests for Oral Presentations:* During online registration, you may indicate if you wish to present oral comments during the public comment session, and you may indicate which topic(s) you would like to address. FDA will do its best to accommodate requests to make public comments. We seek a broad representation of ideas and issues presented at the meeting.

All requests to make oral presentations must be received by November 1, 2021, 11:59 p.m. Eastern time. We urge individuals and organizations with common interests to consolidate or coordinate their presentations and request time for a joint presentation. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each presentation is to begin, and we will select and notify participants by November 4, 2021. Typically, presentations are between 3 and 5 minutes. No commercial or promotional material will be permitted to be presented at the public meeting. Actual presentation times may vary based on how the meeting progresses in real time.

An agenda for the public meeting and any other background materials will be made available at least 5 days before the meeting at *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops.* Those without internet or email access can register and/or request to participate by contacting Juanita Yates (see **FOR FURTHER INFORMATION CONTACT**) no later than November 1, 2021.

*Transcripts:* Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov* and *https://www.fda.gov/news-events/fda-meetings-conferences-and-workshops.* You may also view the transcript at the Dockets Management Staff (see **ADDRESSES**).

Dated: October 5, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021–22109 Filed 10–8–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2021–0024]**

### Request for Information on the National Flood Insurance Program's Floodplain Management Standards for Land Management and Use, and an Assessment of the Program's Impact on Threatened and Endangered Species and Their Habitats

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice and request for information.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is issuing this Request for Information to receive the public's input on two topics. First, FEMA seeks the public's input on revising the National Flood Insurance Program's (NFIP) floodplain management standards for land management and use regulations to better align with the current understanding of flood risk and flood risk reduction approaches. Specifically, FEMA is seeking input from the public on the floodplain management standards that communities should adopt to result in safer, stronger, and more resilient communities. Additionally, FEMA seeks input on how the NFIP can better promote protection of and minimize any adverse impact to threatened and endangered species, and their habitats.

**DATES:** Written comments are requested on or before December 13, 2021.

**ADDRESSES:** You may submit comments, identified by Docket ID: FEMA–2021–0024, through the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Rachel Sears, Supervisory Emergency Management Specialist, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, *fema-regulations@fema.dhs.gov,* 202–646–4105.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments using the method identified in the **ADDRESSES** section.

*Instructions:* All submissions must include the agency name and Docket ID for this notice. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security notice, which can be viewed by clicking on the ''Privacy and Security Notice'' link on the homepage of *www.regulations.gov.* Commenters are encouraged to identify the number of the specific question or questions to which they are responding.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov.*

## II. Background

The NFIP is a program that makes flood insurance available in those States and communities that agree to adopt and enforce floodplain management ordinances to reduce future flood risk. The NFIP enables property owners in participating communities to purchase flood insurance to provide financial protection against flood losses. Joining the NFIP is an important step toward reducing a community's risk from flooding and making a faster, more sustained recovery should flooding occur.[1] Participation in the NFIP is voluntary and is contingent on community compliance with NFIP floodplain management regulations. FEMA does not regulate land use and does not haves authority over local development. Rather, it requires participating communities to adopt the minimum NFIP requirements through zoning codes, subdivision ordinances, and/or building codes or adopt special purpose floodplain management ordinances and encourages communities to exceed those requirements and improve long-range land management and use of flood-prone areas. More than 22,500 communities have agreed to adopt and enforce floodplain management ordinances that meet minimum NFIP requirements and provide building standards designed to reduce flood loss for new and existing development.[2]

The NFIP minimum requirements apply to areas designated as Special Flood Hazard Areas (SFHAs) by FEMA. The SFHA is the area that would be flooded by the ''base flood'' (defined as the flood that has a 1 percent chance of occurring in any given year; also known as the ''100-year flood''). The minimum NFIP requirements for participating communities include, but are not limited to: (1) Requiring permits for all proposed construction or other development in the community to determine whether such construction or development will be placed in flood-prone areas; (2) reviewing proposed development to assure that all necessary permits have been received; (3) elevation of new and substantially improved residential structures above the base flood level; (4) elevation or dry floodproofing (made watertight) of new or substantially improved non-residential structures in Zones A;[3] (5) with limited exception, the prohibition of encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway,[4] the central portion of a riverine floodplain needed to carry deeper and faster moving water; and (6) additional requirements to protect buildings in coastal areas from the impacts of waves, high velocity, and storm surge. These requirements have proved to be an effective way to reduce the flood risk to new buildings and infrastructure.[5]

In addition to protecting new buildings, the NFIP has substantial improvement and substantial damage requirements that ensure flood protection measures are integrated in structures built before a community adopted its first floodplain management requirements. ''Substantial improvement'' means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the ''start of construction'' of the improvement.[6] ''Substantial damage'' means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.[7] When substantial improvement or substantial damage occurs, the community, which makes the determination, must ensure that the NFIP requirements, which the community has adopted, are applied to these structures so that they are protected from future flood damage.

In January 2021, the Association of State Floodplain Managers (ASFPM) and the Natural Resources Defense

[1] *See generally* 42 U.S.C. 4001 *et seq.,* 44 CFR parts 59–80.

[2] *See* generally The Community Status Book found at *http://www.fema.gov/flood-insurance/work-with-nfip/community-status-book* (last accessed July 8, 2021).

[3] *See* 44 CFR 64.3(a)(1). Zone A—area of special flood hazard without water surface elevations determined.

[4] *See* 44 CFR 60.3(d)(3), which prohibits encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.

[5] Structures built to NFIP standards experience 65 percent less damage than structures not built to these standards and have resulted in $2.4 billion per year in reduced flood losses, saving the nation more than $100 billion over the last 40 years. *See* Individuals—Floodplain Management Resources, found at *http://www.fema.gov/floodplain-management/manage-risk/individuals* (last accessed June 16, 2021).

[6] 44 CFR 59.1.

[7] *Id.*

Council (NRDC) submitted a rulemaking petition request to FEMA seeking, among other things, revisions to the current FEMA floodplain management standards for land management and use regulations.[8] The petition requested the agency consider adopting the higher minimum standards contained in today's nationally applicable consensus model codes and standards from the International Codes Council (I–Codes) and the American Society of Civil Engineers (ASCE) *Flood Resistant Design and Construction* standard (ASCE–24) as a minimum floodplain management standard, and to develop forward-looking minimum construction and land-use standards for flood-prone areas through regulatory revision. FEMA has previously published excerpts and highlights of the flood resistant provisions of the I–Codes and ASCE–24 which generally address siting, design, construction, and elevation requirements for structures in flood hazard areas to assist communities to understand the application of consensus standards, but FEMA has not adopted these as the agency's floodplain management standards.[9]

FEMA is issuing this Request for Information to seek information from the public on the agency's current floodplain management standards to ensure the agency receives public input as part of the agency's regular review of programs, regulations, and policies, and to inform any action to revise the NFIP minimum floodplain management standards.

FEMA also requests input from the public on what measures the NFIP can take to further protect and minimize any adverse impacts to threatened and endangered species and their habitat. The Endangered Species Act (ESA) protects threatened and endangered species by preserving the ecosystems in which they live and protecting the species from harm.[10] All persons, including individuals and local and state jurisdictions, are required to comply with the ESA. Section 7(a)(2) of the ESA creates a consultation process between a Federal agency that will undertake an action, including implementing a program, and either the U.S. Fish and Wildlife Service or National Marine Fisheries Service (or both) to insure that the action does not jeopardize the continued existence of endangered or threatened species, or result in the adverse modification of critical habitat. Section 7(a)(1) mandates Federal agencies to use their authorities to conserve threatened and endangered species and minimize any adverse impact to them.[11]

The NFIP floodplain regulations are designed to encourage the adoption of adequate State and local floodplain management measures for land development.[12] This creates an opportunity for the NFIP not only to work towards its goal of reducing flood risk but simultaneously works toward the conservation of federally threatened and endangered (T&E) species and critical habitat. Conserving the natural and beneficial functions of the floodplain and reducing flood risk can work in tandem with the ESA requirement of conserving T&E species and critical habitat. Often, measures taken to conserve T&E species and their habitat in the floodplain benefit people by reducing the risk of flooding and the harm that can result to their person and property, while also conserving the natural and beneficial functions of the floodplain.

The agency is seeking input from the public on the floodplain management standards that communities should adopt to result in safer, stronger, and more resilient communities and also to promote protection of T&E species and their habitats. Specifically, FEMA is seeking input on opportunities for the agency to improve the minimum floodplain management standards for land management and use which better align the NFIP with the current understanding of flood risk and flood risk reduction approaches. FEMA has not revised current floodplain management standards for flood-prone area regulations since they were implemented in 1976. The agency is considering revision to these regulations based on its current understanding of flood risk and flood risk reduction approaches and is now undertaking a thorough review of the floodplain management standards, along with prior published studies and reports, to determine how these standards can best meet FEMA and stakeholder needs.[13]

FEMA also plans to re-evaluate the implementation of the NFIP under the ESA at the national level to complete a revised Biological Evaluation[14] re-examining how NFIP actions influence land development decisions; the potential for such actions to have adverse effects on T&E species and critical habitats; and to identify program changes that would prevent jeopardy to T&E species and/or destruction or adverse modification of designated critical habitats as well as to promote the survival and recovery of T&E species. Public feedback will help FEMA with this process.

It is important to note that FEMA continually evaluates its programs and policies, as well as the regulatory program for regulations that are candidates for modification, streamlining, expansion, or repeal. FEMA does so through legally mandated review requirements (*e.g.,* Unified Agenda reviews and reviews under section 610 of the Regulatory Flexibility Act[15]) and through other informal and long-established mechanisms (*e.g.,* use of Advisory Councils, feedback from FEMA field personnel, input from internal working groups, and outreach to regulated entities and the public). This **Federal Register** notice supplements these existing extensive FEMA regulatory and program review efforts.

## II. Request for Input

### *A. Importance of Public Feedback*

Because the impacts and effects of Federal regulations and policies tend to be widely dispersed in society, members of the public are likely to have useful information, data, and perspectives on the benefits and burdens of FEMA's existing programs, regulations, information collections, and policies. Given the importance of public input, FEMA is seeking broad public feedback to facilitate FEMA's review and revision of existing floodplain management regulations.

### *B. Maximizing the Value of Public Feedback*

This notice contains a list of questions, the answers to which will assist FEMA in reviewing existing floodplain management standards and also assessing the influence of NFIP implementation on local floodplain

[8] *See http://www.nrdc.org/sites/default/files/petition-fema-rulemaking-nfip-20210105.pdf* (last accessed June 21, 2021).

[9] *See* FEMA's Flood Building Codes Resource Page at *https://www.fema.gov/emergency-managers/risk-management/building-science/building-codes/flood (last accessed July 7, 2021). Note that FEMA's Community Rating System is a voluntary incentive program that recognizes and encourages community floodplain management practices that exceed the minimum requirements of the NFIP for floodplain management.*

[10] *See* 16 U.S.C. 1531 *et seq.*

[11] 16 U.S.C. 1536.

[12] 42 U.S.C. 4102(c).

[13] *See* generally ''National Flood Insurance Program: Evaluation Studies'' found at *http://www.fema.gov/flood-insurance/rules-legislation/2006-evaluation* (last accessed July 8, 2021) and ''Building Codes Save: A Nationwide Study of Loss Prevention'' found at *http://www.fema.gov/emergency-managers/risk-management/building-science/building-codes-save-study* (last accessed July 8, 2021) among others.

[14] Agencies may submit to the Services, an evaluation on the likely effects of an action, if T&E species or critical habitat are likely to be affected by Agency action.

[15] 5 U.S.C. 601 *et seq.*

development, which subsequently has the potential to impact threatened and endangered species and their habitats. FEMA encourages public comment on these questions and seeks any other data commenters believe are relevant to FEMA's efforts. The type of feedback that is most useful to the agency includes feedback that identifies specific information that the agency should consider. For example, feedback that simply states that a stakeholder feels strongly that FEMA should change the floodplain management standards regulation but does not contain specific information on how the proposed change would impact the costs and benefits of the regulation, is much less useful to FEMA. FEMA is looking for new and/or specific information, data, and perspectives to support any proposed changes.

Commenters should consider these principles as they answer and respond to the questions in this notice.

- Commenters should identify, with specificity, appropriate minimum floodplain management standards and/or measures for increased flood risk reduction.
- Commenters should identify, with specificity, appropriate measures the agency can take to promote the conservation of T&E species and their habitats.
- Commenters should provide specific data that document the costs, burdens, and benefits of existing requirements to the extent they are available. Commenters might also address how FEMA can best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of the minimum floodplain management standards for increased flood risk reduction and increased species/habitat protection and whether there are existing sources of data that FEMA can use to evaluate the effects of the minimum floodplain management standards and increased protection of T&E species and their habitats over time.
- Particularly where comments relate to the costs or benefits of minimum floodplain management standards and protection of T&E species and their habitats, comments will be most useful when there are data available and communities have experience utilizing the minimum floodplain management standards and/or species/habitat protection to ascertain the actual impact.

*C. List of Questions for Commenters*

The below non-exhaustive list of questions is meant to assist members of the public in the formulation of comments and is not intended to restrict the issues that commenters may address:

(1) FEMA has addressed risk to existing or non-conforming construction (buildings not constructed to current minimum floodplain management standards) in the regulations through the ''substantial improvement/substantial damage'' requirements. These requirements have largely been tied to the definitions of ''substantial improvement'' and ''substantial damage.'' Is ''substantial improvement/substantial damage'' the best way to address risk for non-conforming buildings? If so, should FEMA consider the use of cumulative ''substantial improvement'' and/or ''substantial damage'' requirements over a given time period as a requirement? Should ''substantial improvement'' and/or ''substantial damage'' use an assessment cost value or a replacement cost value, or are there other valuation methods that may be more appropriate? Should the regulations provide more detail on how the ''substantial improvement'' and/or ''substantial damage'' determinations should be made?

(2) The elevation of structures above expected base flood levels, called ''freeboard,'' is an important precept of floodplain management. ''Freeboard'' is usually expressed in feet above a base flood elevation for purposes of floodplain management. NFIP communities must require new, ''substantially improved,'' or ''substantially damaged'' structures in the SFHA to be elevated to the height of the one percent annual chance flood level, also referred to as the Base Flood Elevation or BFE. Some States and communities require newly constructed buildings to be built higher than the base flood elevation to further reduce the risk of flood damage with freeboard requirements set to a specific height to provide the additional margin of risk reduction above the BFE. The NFIP has strongly encouraged but not required higher elevation standards, such as those included in the I–Codes and ASCE 24. Should FEMA update flood elevation requirements for SFHAs by setting higher freeboard levels? If so, what should FEMA consider for the higher elevation levels for freeboard? What data exists to support higher elevation levels for freeboard or methods that provide a more consistent level of protection? Will freeboard elevation generally raise the market value of properties in SFHAs and if so how would the increase in market value compare to the cost of elevation? Are there other technology advancements or building standards in design and construction that should be considered beyond freeboard levels? If so, do they address other floodplain management criteria (*e.g.,* reasonably safe from flooding; adequately anchored; methods and practices that minimize or are resistant to flood damage; water load values; wind load values; substantially impermeable)?

(3) FEMA has not developed higher minimum floodplain management standards for structures and facilities that perform critical actions as defined in 44 CFR 9.4. These structures and facilities must currently comply with the same minimum requirements as non-critical structures and facilities except for structures and facilities that are covered by Executive Order (E.O.) 11988, Floodplain Management.[16] Should FEMA develop higher standards for these structures and facilities? If so, why? Should FEMA consider differences between certain structures and facilities, such as use, occupancy, operational size, or public and private operators in developing higher standards? Should FEMA consider differences such as use, occupancy, operational size, or public and private operators in developing higher standards for structures and facilities performing critical actions?

(4) Recurring flooding events provide evidence that areas adjacent to the SFHA experience significant flooding and unacceptable levels of disaster suffering, yet the NFIP minimum floodplain management standards do not extend to these locations. How can the NFIP take a more risk-informed approach to defining flood hazard? Is there a need for FEMA's NFIP minimum floodplain management standards to be extended by establishing specific requirements for the areas immediately adjacent to the SFHA? If so, what specific floodplain management standards could be successful to reduce losses and hardship? What approaches would be effective for identifying these areas for communities to regulate? Would new zones or overlays depicted with the SFHA via the National Flood Hazard Layer (NFHL)[17] serve this need

[16] 42 FR 26951 (May 24, 1977). Facilities that perform critical actions that are covered by Executive Order 11988 include, but are not limited to, those facilities which produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials; hospitals and nursing homes, and housing for the elderly; emergency operation and data storage centers; and power generating facilities.

[17] The National Flood Hazard Layer (NFHL) is a geospatial database that contains current effective flood hazard data. This information can be used to better understand the level of flood risk and type of flooding in an area. *See generally http://www.fema.gov/flood-maps/national-flood-hazard-layer* (last accessed July 14, 2021).

or are there other tools that could be more effective? Should FEMA expand the SFHA generally from the 1 percent annual chance flood area to a 0.2 percent or a 0.1 percent area, and what decision rule should FEMA use to choose the appropriate area? Should the SFHA be expanded from a certain percent annual chance area to the flood of record (or whichever is higher)? Similarly, what standards or restrictions should be considered for high risk flood areas that are within the SFHA (*e.g.,* flash flood, mudslide, erosion prone, high velocity)? Alternatively, should FEMA be aware of and/or use a different metric to identify flood risk?

(5) In the past 30 years, 1 of every 6 dollars paid out in NFIP claims has gone to a building with a history of multiple floods.[18] What steps should FEMA take to reduce the disproportionate financial impact the multiple loss properties have on the NFIP? Should FEMA consider regulatory changes for properties that have repetitive losses? [19] If so, what should the minimum NFIP floodplain management standards be for those properties? Should these properties be targeted for managed retreat? How should the NFIP consider issues of equity when deciding how to address these properties?

(6) FEMA must ensure that the implementation of the NFIP does not jeopardize T&E species and does not result in the destruction or adverse modification of their designated critical habitats. FEMA must also ensure the NFIP is effective in meeting its goals of providing flood insurance, mitigating flood loss, reducing flood risk, and encouraging responsible development. What additional considerations should FEMA incorporate into the NFIP minimum floodplain management standards to promote the protection and conservation of T&E species and their designated habitat? In what ways could the NFIP minimum floodplain management standards be amended to more explicitly or comprehensively protect the natural and beneficial functions of floodplains to recognize their intrinsic value and benefits to floodplain management, T&E species, and the environment generally? How do current Federal environmental requirements and standards work within NFIP participating State, local, Tribal, and territories to identify and address impacts to T&E species and their habitats? If there are State-specific environmental requirements and/or standards, how could changes to the NFIP support or interfere with the current State regulatory environment?

(7) How could one or more of the following specific changes to the NFIP minimum floodplain management standards benefit T&E species and their habitats while furthering the goal of improving resilience to flooding? What would the potential impact be on the NFIP participating communities?:

(a) Limiting construction in any identified riparian buffer zone;

(b) Requiring compensatory storage to have no net increase in projected flooding levels for all development in the SFHA;

(c) Requiring a more restrictive regulatory floodway standard; [20]

(d) Requiring compensatory conservation credits/areas for all development in portions of the SFHA that provide natural and beneficial functions;

(e) Requiring low impact development standards and/or permeable surfaces that may benefit T&E species and habitat; and/or

(f) Prohibiting or limiting construction in any portion of the SFHA.

How should the suggested changes listed above be prioritized to best benefit T&E species while also furthering the goals of the NFIP? Are there additional changes that should be considered and if so, what are they and what is their prioritization in comparison to the changes listed?

(8) NFIP participating communities can also improve protection of T&E species and their critical habitats through their floodplain management activities. In what ways can NFIP participating communities demonstrate to FEMA that permitted floodplain development does not adversely impact T&E species and their habitats? What changes are required to existing NFIP minimum floodplain management standards to allow NFIP participating communities to better demonstrate no adverse impact? What ways, such as technical assistance or other means, could FEMA assist NFIP participating communities to help protect T&E species and their habitats?

(9) Local floodplain managers are often tasked with enforcement of NFIP minimum floodplain management standards. In what ways can FEMA strengthen the NFIP participation and increase enforcement of NFIP minimum floodplain management standards to build community resilience? How can FEMA better assist communities to mitigate flood loss and reduce risk? In what ways could FEMA better support local floodplain managers to effectively enforce the NFIP minimum floodplain management standards?

(10) While the NFIP minimum floodplain management standards are broadly applicable nationwide and provide a sound basis from which communities can improve their floodplain management programs, there may be floodplain uses, occupancies, and flooding characteristics that call for more specific regulatory initiatives. Are there any NFIP minimum floodplain management standards that currently cause hardship, conflict, confusion or create an economic or financial burden? If so, what are they and how can they be modified to reduce the burdens while still meeting the objectives of mitigating flood loss and reducing risk? Some structures in a community may be exempted from the NFIP minimum floodplain management standards through a variance. Are there changes that can be made to variance requirements to help reduce the burdens while still meeting the objectives of mitigating flood loss and reducing risk? Are there specific types of development or uses that should be considered for exemption from NFIP minimum floodplain management standards or should different standards apply? If so, what are they, why should specific types of development or uses be considered for exemption, and what different standards should be applicable?

(11) There have been recent proposals regarding disclosure of flood risk,[21] recommending development of an affirmative obligation on the part of sellers or lessors of residential properties to disclose information about flood risk to prospective buyers or lessees. These proposals would require States and communities to establish flood risk reporting requirements for sellers and lessors as a condition of participation in the NFIP. Should States and/or local governments be required to establish minimum flood risk reporting requirements for sellers and lessors as a condition for participation in the NFIP? Should there be an affirmative obligation on the part of sellers and/or lessors of residential properties to disclose information about flood risk to prospective buyers or lessees? If so,

[18] As of July 2019, approximately $10.9 billion in claims have been paid on properties with two or more losses accounting for over 15 percent of FEMA's total of $70.6 billion paid claims during the same period. *See* generally ''OpenFEMA Dataset: FIMA NFIP Redacted Claims'' found at *http://www.fema.gov/openfema-data-page/fima-nfip-redacted-claims* (last accessed July 8, 2021).

[19] *See* 42 U.S.C. 4121.

[20] *See* 44 CFR 59.1 defining a regulatory floodway and 44 CFR 60.3(d)(3) for the current standard.

[21] *See* H.R. 2874 ''21st Century Flood Reform Act,'' 115th Congress (2017–2018) at *http://www.congress.gov/bill/115th-congress/house-bill/2874* (last accessed July 8, 2021) among others.

what is the most effective way to require this disclosure? Should the process be modeled on requirements for sellers to disclose details on environmental hazards, such as lead-based paint hazards? What details should be included in the disclosure, such as knowledge of past floods and/or flood damage, a requirement to maintain flood insurance, knowledge the property is located in a SFHA at the time of offering, and the cost of existing flood insurance?

(12) The United States is experiencing increased flooding and flood risk from climate change.[22] Climate change may exacerbate the risk of flooding to homeowners. Should FEMA base any NFIP minimum floodplain management standard changes on future risk and specifically on projections of climate change and associated impacts, such as sea level rise? What equity considerations should be factored into such decisions if climate change disproportionately harms underserved and vulnerable areas? What other considerations should be factored into an analysis involving climate change? Should the NFIP better distinguish NFIP minimum floodplain management standards between riverine and coastal communities? Should the NFIP minimum floodplain management standards incorporate pluvial (surface/urban) flooding concerns? Are there specific measures and standards that should be taken to ensure structures can withstand the greater intensity, duration, frequency and geographic distribution of flooding events? If so, what are they and how can those measures and standards ensure structures and communities can readily adapt and increase resilience to the impacts of climate change?

(13) The current NFIP minimum floodplain management standards can be found at 44 CFR part 60 subpart A—Requirements for Floodplain Management Regulations. As part of this Request for Information seeking input on new and even transformative reforms to the NFIP minimum floodplain management standards, FEMA also is exploring potential revisions to current regulatory provisions that are unnecessarily complicated, create unintended inequities or could be streamlined. Are there current regulatory provisions that create duplication, overlap, complexity, or inconsistent requirements or unintended inequities with other FEMA or other Federal programs? Are there current regulatory provisions that present recurring difficulties for local and State officials implementing NFIP minimum floodplain management standards and if so, what improvements should be made?

(14) Are there technological advances, building standards, or standards of practice that could help FEMA to modify, streamline, or improve existing NFIP minimum floodplain management standards? If so, what are they and how can FEMA leverage those technologies and standards to achieve the agency's statutory and regulatory objectives?

(15) FEMA recognizes the vital role that State, local, Tribal, and territorial governments play in floodplain management and that they may have innovative solutions to complex floodplain management challenges. What successful mitigation policies, building design standards, building construction standards, T&E species protections, and/or other floodplain management approaches to mitigate flood loss and reduce risk have been taken by State, local, Tribal, and territorial governments? In what ways do the current NFIP minimum floodplain management standards present barriers or opportunities to the successful implementation of those approaches? What capabilities and capacity impacts should FEMA address as it considers changes to the NFIP minimum floodplain management standards and to strengthen NFIP protection of T&E species and their habitats?

(16) As FEMA undertakes an analysis of potential effects of the NFIP on T&E species, the agency must consider the NFIP's effect on floodplain development and the extent to which NFIP actions influence land development decisions. ''Development'' means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures; mining; dredging; filling; grading; paving; excavation, or drilling operations; or storage of equipment or materials.[23] Is information available on the NFIP's influence on floodplain development? If so, provide or identify any data or materials identifying the NFIP's influence. How can FEMA measure the NFIP's effect on floodplain development? Are there specific NFIP regulations, policies and/or development standards that currently influence State, local, Tribal, and/or territorial governments in their development decisions that may have a positive or negative impact on T&E species and their habitats? If so, what are they and how do they influence development decisions that impact T&E species and their habitats? Are there changes to those regulations, policies and/or standards that, if made, would have a positive impact on T&E species and their habitats? If so, what are those changes?

(17) FEMA is developing a national programmatic framework for nationwide compliance with the ESA and is re-examining the extent to which NFIP actions may have adverse effects on T&E species and their habitats. Should FEMA reconsider its mapping practices, including the issuance of Letters of Map Revision based on Fill (LOMR-Fs)? Should the placement of fill material, defined as material used to raise a portion of a property to or above the Base Flood Elevation within the SFHA, be prohibited by NFIP minimum floodplain management standards? What would the impact of this change be on T&E species and NFIP participating communities?

(18) Hazard mitigation planning reduces loss of life and property by minimizing the impact of disasters, including floods. It begins with State, local, and Tribal governments identifying natural disaster risks and vulnerabilities that are common in the area and then developing long-term strategies for protecting people and property from similar events. Mitigation plans are key to breaking the cycle of disaster damage and reconstruction. How should FEMA consider integrating mitigation planning with other Federal, State, or local mitigation planning such as community planning, economic planning, coastal zone planning, and other types of planning activities to improve the overall effectiveness of mitigation planning and floodplain management activities? Are there planning best practices, processes, or data that could better inform planning decision-making and the development and implementation of floodplain management standards?

FEMA notes that this notice is issued solely for information and program-planning purposes. Responses to this

[22] *See* Fourth National Climate Assessment, Chapter 3: Water found at *http://nca2018.globalchange.gov/chapter/3/*. Climate change means that flood events are on the rise. Climate change is increasing flood risk through (1) more ''extreme'' rainfall events,'' caused by a warmer atmosphere holding more water vapor and changes in regional precipitation patterns; and (2) sea-level rise. *See* Rob Bailey, Claudio Saffioti, and Sumer Drall, *Sunk Costs: The Socioeconomic Impacts of Flooding* 3 and 8, Marsh McLennan (2021).

[23] 44 CFR 59.1.

notice do not bind FEMA to any further actions related to the response.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2021–22152 Filed 10–8–21; 8:45 am]

**BILLING CODE 9111–47–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVC01000.L19200000.ET0000; LRORF1811000; MO# 4500152931]**

### Notice of Proposed Extension of Public Land Order No. 7873 and Public Meeting; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In response to a petition from the Bureau of Land Management (BLM) the Secretary of the Interior proposes to extend the duration of the withdrawal created by Public Land Order (PLO) No. 7873 for an additional four-year term. The withdrawal created by PLO No. 7873 expires on August 22, 2022. The petition/application also includes the proposed withdrawal extension of 68,809.44 acres of Federal land in the Dixie Valley Training Area from the mineral leasing laws (not currently withdrawn from these laws under Section 3016 of the National Defense Authorization Act (NDAA) for Fiscal Year 2000, to maintain the current environmental baseline, relative to mineral exploration and development for land management evaluation purposes, subject to valid existing rights. This Notice invites the public to comment on the BLM application for the requested four-year withdrawal extension and notifies the public that at least one public meeting will occur.

**DATES:** Comments on the proposed 4-year withdrawal should be received on or before January 10, 2022.

In addition, a virtual public meeting will be held December 9, 2021, 4:00 p.m. Pacific Time (U.S. and Canada). The Zoom link for the *Bureau of Land Management—Carson City Land Management Evaluation Withdrawal Extension—Virtual Public Meeting* is as follows:

Register in advance for this webinar: *https://empsi.zoom.us/webinar/register/WN_D_Kw02L0TuSrS6we67_LdQ.*

After registering, you will receive a confirmation email containing information about joining the webinar.

**ADDRESSES:** Comments should be submitted by any of the following methods:

- *Email: blm_nv_ccdowebmail@blm.gov* with the subject line ''LME Withdrawal Extension''.
- *Fax:* (775) 885–6147.
- *Mail:* BLM Carson City District Office, Attn: LME Withdrawal Extension, 5665 Morgan Mill Rd., Carson City, NV 89701.

**FOR FURTHER INFORMATION CONTACT:** Colleen Dingman, BLM, Carson City District Office, 775–885–6168; address: 5665 Morgan Mill Rd., Carson City, NV 89701; email: *cjdingman@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** PLO No. 7873 withdrew approximately 694,838.84 acres of Federal land in Churchill, Lyon, Mineral, Nye, and Pershing Counties, Nevada, for up to four years from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, and leasing under the mineral and geothermal leasing laws, subject to valid existing rights. The purpose of the proposed withdrawal extension is to maintain the current environmental baseline, relative to mining, mineral exploration and development, and geothermal energy development for land management evaluation purposes. The petition/application also includes the proposed withdrawal extension of 68,809.44 acres of Federal land in the Dixie Valley Training Area from the mineral leasing laws (not currently withdrawn from these laws under Section 3016 of the NDAA for Fiscal Year 2000, Pub. L. 106–65), to maintain the current environmental baseline, relative to mineral exploration and development for land management evaluation purposes, subject to valid existing rights.

Including the 8,722.47 acres of Department of the Navy (DON) lands, the total Federal land included in the withdrawal extension is 772,370.75 acres. Non-Federal lands totaling 66,160.53 acres are described within the withdrawal area. Any current or future Federal estate interest in these non-Federal lands is subject to this withdrawal.

The BLM and the DON are engaged in the evaluation of issues relating to possible future legislative transfer of the subject land to the jurisdiction of the DON in connection with the DON's modernization of Naval Air Station Fallon, Fallon Range Training Complex, Nevada (FRTC). While the DON requested legislative expansion of its existing withdrawal at FRTC, the NDAA for FY2021 extended the existing FRTC withdrawal for an additional 25 years but did not include the additional public lands requested for the FRTC Modernization. The DON anticipates again asking for a legislative withdrawal of these additional lands and requested that the BLM file a petition/application for extension of the existing four-year withdrawal. PLO No. 7873 is included by reference (83 FR 44654). In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the BLM Carson City District Office, Carson City, Nevada, anticipates completion of Categorical Exclusion documentation for the proposed withdrawal extension. A complete description, along with all other records pertaining to the extension, can be examined in the BLM Carson City District Office at the address shown above. Comments on the proposed 4-year withdrawal should be received on or before January 10, 2022.

In addition, a virtual public meeting will be held December 9, 2021, 4:00 p.m. Pacific Time (U.S. and Canada). The Zoom link for the *Bureau of Land Management—Carson City Land Management Evaluation Withdrawal Extension—Virtual Public Meeting* is as follows:

Register in advance for this webinar: *https://empsi.zoom.us/webinar/register/WN_D_Kw02L0TuSrS6we67_LdQ.*

After registering, you will receive a confirmation email containing information about joining the webinar.

The withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.

For a period until January 10, 2022 all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Nevada State Director at the address indicated above. 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.

**Jon K. Raby,**

*State Director, Nevada.*

[FR Doc. 2021–22137 Filed 10–8–21; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX064A000 221S180110; S2D2S SS08011000 SX064A000 22XS501520; OMB Control Number 1029–0027]**

### Agency Information Collection Activities; Agency Information Collection Activities; General Requirements for Surface Coal Mining and Reclamation Operations on Federal Lands

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of Information Collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before November 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.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0027 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 19, 2021 (86 FR 38123). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Abstract:* Section 523 of the Surface Mining Control and Reclamation Act of 1977 requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information is needed to assist the regulatory authority to determine the eligibility of an applicant to conduct coal mining on Federal lands.

*Title of Collection:* General Requirements for Surface Coal Mining and Reclamation Operations on Federal Lands.

*OMB Control Number:* 1029–0027.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Businesses and state governments.

*Total Estimated Number of Annual Respondents:* 10.

*Total Estimated Number of Annual Responses:* 10.

*Estimated Completion Time per Response:* Varies from 1 hour to 244 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 2,121.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* One time.

*Total Estimated Annual Nonhour Burden Cost:* $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Mark J. Gehlhar,**

*Information Collection Clearance Officer, Division of Regulatory Support.*

[FR Doc. 2021–22117 Filed 10–8–21; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–909]**

### Importer of Controlled Substances Application: United States Pharmaceopeial Convention

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

**ACTION:** Notice of application.

**SUMMARY:** United States Pharmaceopeial Convention 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 November 12, 2021. Such persons may also file a written request for a hearing on the application on or before November 12, 2021.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on August 18, 2019, United States Pharmaceopeial Convention, 7135 English Muffin Way, Frederick, Maryland 21704, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Lisdexamfetamine ..... | 1205 | II |

The company plans to import the bulk control substance for analytical testing 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 the Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

**Brian S. Besser,**

*Acting Assistant Administrator.*

[FR Doc. 2021–22138 Filed 10–8–21; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meetings

**TIME AND DATE:** 1:00 p.m. Thursday, October 14, 2021.

**PLACE:** U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of July 13, 2021 Quarterly Meeting Minutes.

2. Pandemic Updates since July Quarterly Meeting from the Acting Chairman, Commissioner, Acting Chief of Staff/Case Operations Administrator, Case Services Administrator, Executive Officer, and General Counsel.

3. Update on the proposals voted forth at July 2021 Quarterly Meeting.

4. Vote on Final Rule for 28 CFR 2.218(e).

**CONTACT PERSON FOR MORE INFORMATION:** Jacquelyn Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC 20530, (202) 346–7010.

**Patricia K. Cushwa,**

*Acting Chairperson, U.S. Parole Commission.*

[FR Doc. 2021–22254 Filed 10–7–21; 4:15 pm]

**BILLING CODE 4410–31–P**

## LIBRARY OF CONGRESS

### Copyright Office

**[Docket No. 2021–5]**

### Publishers' Protections Study: Notice and Request for Public Comment

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

**SUMMARY:** The United States Copyright Office is undertaking a public study at the request of Congress to evaluate current copyright protections for publishers. Among other issues, the Office will consider the effectiveness of publishers' existing rights in news content, including under the provisions of title 17 of the U.S. Code, as well as other federal and state laws; whether additional protections are desirable or appropriate; the possible scope of any such new protections, including how their beneficiaries could be defined; and how any such protections would interact with existing rights, exceptions and limitations, and international treaty obligations. To aid in this effort, the Office is seeking public input on a number of questions. The Office also plans to hold a virtual public roundtable to discuss these and related topics on December 9, 2021.

**DATES:** Comments are due on or before November 26, 2021.

**ADDRESSES:** The Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions are available on the Copyright Office website at *http://www.copyright.gov/policy/publishersprotections/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below, for special instructions.

The Office plans to hold the public roundtable on December 9, 2021, from 9:00 a.m. to 5:00 p.m. Eastern Standard Time remotely using the Zoom videoconferencing platform. A participation request form will be posted on the Copyright Office website at *https://www.copyright.gov/policy/publishersprotections/* on or about October 25, 2021. Requests to participate as a panelist in a roundtable session should be submitted by 11:59 p.m. Eastern Standard Time on November 12, 2021. If electronic submission of requests for participation is not feasible, please contact the Office using the contact information below for special instructions. Attendees will be able to join the event online starting at approximately 8:30 a.m., and it will run until approximately 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Kimberley Isbell, Deputy Director of Policy and International Affairs, at *kisbell@copyright.gov,* or Andrew Foglia, Senior Counsel for Policy and International Affairs, at *afoglia@copyright.gov.* Both can be reached by telephone at 202–707–8350.

**SUPPLEMENTARY INFORMATION:** This notification focuses on press publishers in particular, reflecting Congress's request that the Office study developments in foreign jurisdictions regarding their rights. It also includes a number of questions about publishers in other sectors, authors, and the public, to assist in evaluating the appropriate scope and definitions for any possible new protections.

#### I. Introduction

*A. The Internet, Press Publishers, and News Aggregators*

The internet has ushered in an era of disruption and transformation for the press-publishing ecosystem. After rising steadily between 1970 and 2006,[1] newspaper ad revenues plummeted

[1] *See* Michael Barthel & Kirsten Worden, *Newspapers Fact Sheet,* Pew Research Center (June 29, 2021), *https://www.journalism.org/fact-sheet/newspapers/.* Newspaper ad revenue peaked in the early internet era of the late 1990s and, after a brief dip in 2000–01, peaked again in 2005 following a wave of consolidation in the newspaper industry (including a steady decline in the number of cities with competing daily newspapers). *Id.; see also Media Concentration (Part 2): Hearings Before the Subcomm. on Gen. Oversight and Minority Enter. of the H. Comm. on Small Bus.,* 96th Cong. 4–5 (1980) (statement of James M. Dertouzos, Economist, RAND Corp.) (presenting data on consolidation in local news outlets).

62% between 2008 and 2018.[2] Total newspaper circulation, already declining before the internet-era, in 2020 fell to its lowest point since 1940.[3] Digital distribution exposed city papers that once enjoyed close to local monopolies to national competition from well-heeled newsrooms like *The New York Times.* The combination of increased competition, dwindling revenue, and high debt overhangs led to a wave of bankruptcies, consolidations,[4] and leveraged buyouts.[5] From 2008 to 2019, the number of newspaper newsroom employees dropped by more than 40%,[6] and one in five papers closed.[7]

Over the two decades during which press publishers' revenues have declined, a new set of distributors has arisen in the form of online news aggregators.[8] This umbrella term covers a number of distinct services that vary according to the sources they use, the topics they cover, who performs the aggregation, and whether they add original commentary, but in general refers to an online service that collects links to and sometimes snippets of third-party articles and makes them available to its readers.[9] While some news aggregators focus primarily or solely on the distribution of news content, others may aggregate such content only as one part of a wider-ranging social media service, for example by allowing users to share news stories or promoting ''trending topics'' or ''news'' tabs and links. News aggregators may or may not seek licenses for the third-party content they use.

News aggregators, including search engines and social media, have now become the preferred or initial source of news for a majority of digital news consumers.[10] Some commenters suggest that these sources create a ''substitution effect'' by allowing readers to get the news (or at least its gist) without visiting the press publishers' websites.[11] Others assert that news aggregators expand the market by helping readers to discover new websites and tempting them to click on more articles than they would otherwise read.[12]

Empirical data available to date on the relationship between aggregators and news sites is thin. Aggregators appear to drive a significant amount of traffic to news websites, and therefore their activities may serve to expand the market for press publishers.[13] But their referrals may lead to a relatively narrow range of news sites,[14] and they tend to drive traffic to individual articles rather than homepages.[15] So it is also possible

[2] Elizabeth Grieco, *Fast Facts about the Newspaper Industry's Financial Struggles as McClatchy Files for Bankruptcy,* Pew Research Center (Feb. 14, 2020), *https://www.pewresearch.org/fact-tank/2020/02/14/fast-facts-about-the(-newspaper-industrys-financial-struggles/.*

[3] Newspapers Fact Sheet—More Facts: The State of the News Media, Pew Research Center (June 29, 2021), *https://www.pewresearch.org/journalism/fact-sheet/newspapers/.*

[4] The post-2000 consolidations accelerated a trend that began early in the 20th century. *See* Penelope Muse Abernathy, *The Rise of a New Media Baron and the Emerging Threat of News Deserts* 20–21 (2016), *http://newspaperownership.com/wp-content/uploads/2016/09/07.UNC_RiseOfNewMediaBaron_SinglePage_01Sep2016-REDUCED.pdf.*

[5] *See* Penelope Muse Abernathy, *The Expanding News Desert* (2018), *https://www.cislm.org/wp-content/uploads/2018/10/The-Expanding-News-Desert-10_14-Web.pdf;* Russell Baker, *Goodbye to Newspapers?,* N.Y. Rev. of Books (Aug. 16, 2007), *https://www.nybooks.com/articles/2007/08/16/goodbye-to-newspapers/* (describing slashing of news staff at various newspapers under new Wall Street owners).

[6] *See* Elizabeth Grieco, *Fast Facts About the Newspaper Industry's Financial Struggles as McClatchy Files for Bankruptcy,* Pew Research Center (Feb. 14, 2020), *https://www.pewresearch.org/fact-tank/2020/02/14/fast-facts-about-the-newspaper-industrys-financial-struggles/* (''Newsroom employment at U.S. newspapers dropped by nearly half (47%) between 2008 and 2018.''); Mason Walker, *U.S. Newsroom Employment Has Fallen 26% Since 2008,* Pew Research Center (July 13, 2021), *https://www.pewresearch.org/fact-tank/2021/07/13/u-s-newsroom-employment-has-fallen-26-since-2008/* (''Newspaper newsroom employment fell 57% between 2008 and 2020 . . . .'').

[7] Lara Takenaga, *More Than 1 in 5 U.S. Papers Has Closed. This is the Result.,* N.Y. Times (Dec. 21, 2019), *https://www.nytimes.com/2019/12/21/reader-center/local-news-deserts.html;* Penelope Muse Abernathy, *The Expanding News Desert* 12 (2018), *https://www.cislm.org/wp-content/uploads/2018/10/The-Expanding-News-Desert-10_14-Web.pdf.*

[8] *See* Eric Alterman, *Out of Print: The Death and Life of the American Newspaper,* New Yorker (Mar. 24, 2008), *https://www.newyorker.com/magazine/2008/03/31/out-of-print* (describing, among other things, the rise of Huffington Post and other news aggregators).

[9] *See* Kimberley A. Isbell & Citizen Media Law Project, The Rise of the News Aggregator: Legal Implications and Best Practices (2010), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1670339.*

[10] Nic Newman, Richard Fletcher, Antonis Kalogeropoulos, David A.L. Levy & Rasmus Kleis Nielsen, Reuters Institute Digital News Report 2018 14 (2018), *http://media.digitalnewsreport.org/wp-content/uploads/2018/06/digital-news-report-2018.pdf?x89475; see also* Doh-Shin Jeon, *Economics of News Aggregators* (Toulouse Sch. of Econ., Working Paper No. 18–912, 2018), *https://www.tse-fr.eu/sites/default/files/TSE/documents/doc/wp/2018/wp_tse_912.pdf; Traffic Overview: news.google.com,* similarweb, *https://www.similarweb.com/website/news.google.com/#overview* (last visited August 5, 2021) (showing that in 2021 Google News averages over 500 million visits per day). Among aggregating services, one of the trends of the last half decade has been the increasing dominance of the largest platforms and the decline of standalone aggregators. In recent years, Google and Facebook have continued to represent an outright majority of aggregator web traffic and referrals, while BuzzFeed, AOL, Yahoo and HuffPost have cut more than a thousand jobs, and smaller sites such as Gawker, Mic, Refinery29, the Outline, and PopSugar have shrunk, shuttered, or sold. Joshua Benton, *Is Facebook Really A 'News Powerhouse' Again, Thanks to Coronavirus? (No More Than It Was Before),* NiemanLab (Mar. 24, 2020) *https://www.niemanlab.org/2020/03/is-facebook-really-a-news-powerhouse-again-thanks-to-coronavirus-no-more-than-it-was-before/* (showing that over the twelve preceding months, Google and Facebook accounted for over 75% of outside referrals to news sites in the parse.ly network); Paul Farhi, ''*Top Editors Leave HuffPost and BuzzFeed News Amid Growing Doubts About the Future of Digital News,* Washington Post (Mar. 12, 2020), *https://www.washingtonpost.com/lifestyle/media/top-editors-leave-huffpost-and-buzzfeed-amid-growing-doubts-about-the-future-of-digital-news/2020/03/12/32cf09c0-6222-11ea-acca-80c22bbee96f_story.html.*

[11] *See* Eleonora Rosati, *The German 'Google Tax' Law: Groovy or Greedy?* 8(7) J. Intel. Prop. L. & Prac. 497, 497 (2013); Chrysanthos Dellarocas, Juliana Sutanto, Mihai Calin & Elia Palme, *Attention Allocation in Information-Rich Environments: The Case of News Aggregators,* 62(9) Mgmt. Sci. 2543, 2543 (2015); Directive 2019/790, of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC, 2019 O.J. (L 130) 92, 103–04, *https://eur-lex.europa.eu/eli/dir/2019/790/oj* (''Publishers of press publications are facing problems in licensing the online use of their publications to the providers of those kinds of services, making it more difficult for them to recoup their investments.'').

[12] *See, e.g.,* Joan Calzada & Ricard Gil, *What Do News Aggregators Do? Evidence from Google News in Spain and Germany* 1–2 (2018), *http://diposit.ub.edu/dspace/bitstream/2445/150425/1/695577.pdf;* Lisa M. George & Christiaan Hogendorn, *Local News Online: Aggregators, Geo-Targeting and the Market for Local News,* 68(4) J. Indus. Econ. 780, 804 (2020) (finding that a redesign of Google News adding geo-targeted local news links increased the level and share of local news consumption).

[13] Doh-Shin Jeon, *Economics of News Aggregators* (Toulouse Sch. of Econ., Working Paper No. 18–912, 2018), *https://www.tse-fr.eu/sites/default/files/TSE/documents/doc/wp/2018/wp_tse_912.pdf* (reviewing empirical literature and concluding that Google News and Facebook increase overall traffic to news sites); Kenny Olmstead, Amy Mitchell & Tom Rosenstiel, Navigating News Online: Where People Go, How They Get There and What Lures Them Away (2011), *https://www.pewresearch.org/wp-content/uploads/sites/8/legacy/NIELSEN-STUDY-Copy.pdf.*

[14] Kenny Olmstead, Amy Mitchell & Tom Rosenstiel, Navigating News Online: Where People Go, How They Got There, and What Lures Them Away 22 (2011), *https://www.pewresearch.org/wp-content/uploads/sites/8/legacy/NIELSEN-STUDY-Copy.pdf.* (''According to the links users follow, Google News sends most users on to a news destination, but the range of those destinations is rather limited. Most of visitors to Google News . . . do click to a news story. According to the data, less than a third of *news.google.com* visitors headed to *Google.com* or another Google service. The remainder followed a link to a news site. But the benefactors are limited. Fully 69% of visitors to *news.google.com* ended up 3 places: *nytimes.com* (14.6%), *cnn.com* (14.4%) and *abcnews.go.com* (14.0%). Six additional sites were each the destination for 7–10% of visitors during the time period studied'').

[15] *See* Doh-Shin Jeon, *Economics of News Aggregators* 18 (Toulouse Sch. of Econ., Working Paper No. 18–912, 2018), *https://www.tse-fr.eu/sites/default/files/TSE/documents/doc/wp/2018/wp_tse_912.pdf.* ([''N]ews aggregators reduce traffic to newspaper home pages while increasing traffic to individual news articles. Even if all empirical articles agree on the statement that the business-

that their offerings substitute to some degree for the market for newspapers as a whole, even while stimulating traffic to specific articles. This concern has spurred policymakers in several countries to consider legislation aimed at maintaining the viability of their news industry, including by expanding press publishers' rights in the content they publish.

## II. Protections for Press Publishers Under U.S. Law

### *A. Copyright Protection for News Content*

Current U.S. copyright law gives publishers several means to protect their news content. First, a press publisher typically owns the copyright in the collective work, such as the print issue as a whole or the website containing individual news articles.[16] Second, the press publisher may own or be able to assert rights in individual articles that it publishes, through the work-made-for-hire doctrine,[17] assignments of rights, or exclusive licenses.[18]

When a press publisher owns a copyright in either a collective work [19] or in an individual article, it has the exclusive right to do or authorize the reproduction, preparation of derivative works, distribution, public performance, and public display of that work.[20]

These exclusive rights are not absolute. Under U.S. law, several legal doctrines allow the use of news content in certain circumstances without permission or payment.[21] Most fundamentally, facts and ideas are not copyrightable.[22] Nor are titles and short phrases, including headlines.[23] Where there are only a few, limited ways of expressing an idea, the merger doctrine bars protection for the expression in order to avoid giving a backdoor monopoly in the idea itself.[24] Even where the content used is protectable, the fair use doctrine provides considerable scope for quotation and allows certain other reasonable uses.[25]

Applying the fair use doctrine, courts have approved some forms of aggregation of news content but not others. For example, fair use has been found to permit the aggregation of copyrighted text or images by search engines or other indexing processes where those services used only snippets or low-resolution images that were unlikely to substitute for the original copyrighted works.[26] By contrast, the Second Circuit has held that the aggregation of television news content into a searchable index was not fair use, to the extent that the service enabled users to watch and share ten-minute clips.[27] Some news aggregators have

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stealing effect is dominated by the readership-expansion effect, if this comes with a reduced traffic to home pages, it can have a long-term consequence that is not captured by the empirical studies.'').

[16] The Copyright Act defines ''collective work'' as a work ''in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.'' 17 U.S.C. 101. Additionally, collective works under the Copyright Act are considered a type of compilation, which in turn is defined as ''a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.'' 17. U.S.C. 101. The website of a daily newspaper, which assembles various discrete articles, photographs, and advertisements, could be an example of a copyrightable digital ''collective work.''

[17] ''Work made for hire'' is a category of works created for an employer or commissioning party, for which the individual(s) who create the work are not considered the author(s) and initial owner(s) for copyright purposes. Instead, the author is either (1) the employer of that individual, if the work is prepared within the scope of employment; or (2) the entity who commissions or orders the creation of the work, provided that the work fits within one of nine specific categories, and the parties expressly agree in a signed writing that ''the work shall be considered a work made for hire.'' 17 U.S.C. 101. Among these nine categories is ''a contribution to a collective work,'' meaning that a freelance article for a newspaper or magazine *may* constitute a work-made-for-hire, if the author and the publisher agreed to this in writing. 17 U.S.C. 101. In addition, any article written by an employee of a newspaper or magazine as part of their employment would clearly be a work-made-for-hire, with the publisher having the legal status of author (and copyright owner).

[18] For freelance articles or photographs that are not works-made-for-hire, the author—in whom all exclusive rights initially vest—may transfer her rights to the publisher, either for a limited time or for the duration of the copyright, and the transfer may cover all or some of the exclusive rights. A transfer of rights may take the form of an assignment (meaning that legal title is transferred) or an exclusive license (meaning that exclusive permission to use the right(s) is transferred). *See Minden Pictures, Inc.* v. *John Wiley & Sons, Inc.,* 795 F.3d 997, 1003 (9th Cir. 2015). For both types of transfers, the transferee gains the right to bring suit for infringement. *See* 3 Melvin B. Nimmer & David Nimmer, Nimmer on Copyright sec. 12.02[B][1] (2021). In contrast, if the parties only agree to a nonexclusive license—meaning that the author remains free to license the work to other parties—then the grantee cannot bring an infringement suit. *See Minden Pictures, Inc.* v. *John Wiley & Sons, Inc.,* 795 F.3d 997, 1003 (9th Cir. 2015).

[19] The relationship between the copyright in a collective work and in a particular contribution to a collective work is spelled out in the Copyright Act, which sets forth three instances where a publisher who does not own the copyright in an article may nonetheless reproduce and distribute it as part of: (1) ''that particular collective work,'' (2) ''any revision of that collective work, and'' (3) ''any later collective work in the same series.'' 17 U.S.C. 201(c). In the 2001 *Tasini* decision, the Supreme Court explicated section 201(c) as ''adjust[ing] a publisher's copyright in its collective work to accommodate a freelancer's copyright in her contribution. If there is demand for a freelance article standing alone or in a new collection, the Copyright Act allows the freelancer to benefit from that demand; after authorizing initial publication, the freelancer may also sell the article to others.'' *N.Y. Times Co.* v. *Tasini,* 533 U.S. 483, 497 (2001).

[20] *See* 17 U.S.C. 106(1)–(5). As the Copyright Office has noted, these exclusive rights cover certain uses of copyrighted materials online, including the making available of copyrighted works for download or viewing via streaming. *See generally* U.S. Copyright Office, The Making Available Right in the United States (2016), *https://www.copyright.gov/docs/making_available/making-available-right.pdf.*

[21] Similar, though not identical doctrines may be found in most countries' copyright laws. *See, e.g.,* Berne Convention for the Protection of Literary and Artistic Works art. 2(8), Sept. 9, 1886, *as revised* July 24, 1971, *and as amended* Sept. 28, 1979, S. Treaty Doc. No. 99–27, 1161 U.N.T.S. 3 (1986) (''Berne Convention'') (''The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.''); Agreement on Trade-Related Aspects of Intellectual Property Rights art. 9(2), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 (1994), (''Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.''); WIPO Copyright Treaty art. 2, Dec. 20, 1996, S. Treaty Doc. No. 105–17, 2186 U.N.T.S. 121 (''Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.'').

[22] 17 U.S.C. 102(b) (''In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.''); *Feist Publ'ns, Inc.* v. *Rural Tel. Serv. Co.,* 499 U.S. 340, 345 (1991); *see also Baker* v. *Selden,* 101 U.S. 99, 103 (1880) (describing idea/expression dichotomy).

[23] *CMM Cable Rep., Inc.* v. *Ocean Coast Props., Inc.,* 97 F.3d 1504, 1519–20 (1st Cir. 1996) (titles and short phrases uncopyrightable); *Aryelo* v. *Am. Int'l Ins. Co.,* No. 95–1360, 1995 WL 561530 at *1 (1st Cir. Sept. 21, 1995) (per curiam, table, unpublished) (''The non-copyrightability of *titles* in particular has been authoritatively established''); 37 CFR 202.1(a) (excluding from copyright protection ''[w]ords and short phrases such as name, titles, and slogans'').

[24] *N.Y. Mercantile Exch., Inc.* v. *IntercontinentalExchange, Inc.,* 497 F.3d 109, 116–17 (2d Cir. 2007); 4 Melvin B. Nimmer & David Nimmer, Nimmer on Copyright sec. 13.03[B][3] (explaining that ''courts have invoked the doctrine of *merger*'' where ''rigorously protecting the expression would confer a monopoly over the idea itself, in contravention of the statutory command'').

[25] *See, e.g., Swatch Grp. Mgmt. Servs. Ltd.* v. *Bloomberg L.P.,* 756 F.3d 73, 84 (2d Cir. 2014) (explaining that fair use often, though not always, supports direct quotation of copyrighted works in news reporting context); *Nunez* v. *Caribbean Int'l News Corp.,* 235 F.3d 18, 22–23 (1st Cir. 2000) (finding newspaper's use of copyrighted photographs was fair where the photographs themselves were the news story).

[26] *See, e.g., Kelly* v. *Arriba Soft Corp.,* 336 F.3d 811, 818 (9th Cir. 2003) (finding defendant's reproduction of thumbnails of plaintiff's photographs in defendant's search engine results was transformative); *Perfect 10, Inc.* v. *Amazon.com, Inc.* 508 F.3d 1146, 1165 (9th Cir. 2007) (same); *cf. Authors Guild* v. *Google, Inc.,* 804 F.3d 202, 229 (2d Cir. 2015) (finding Google's unauthorized display of snippets of copyrighted works as part of a searchable index was fair use).

[27] *Fox News Network, LLC* v. *TVEyes, Inc,* 883 F.3d 169, 180–81 (2d Cir. 2018); *see also MidlevelU, Inc.* v. *ACI Information Grp.,* 989 F.3d 1205, 1222–23 (11th Cir. 2021) (denying judgment as a matter

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sought licenses instead of relying on a fair use defense, presumably either because their use was more extensive than that permitted by fair use or because they wanted to avoid the expense and uncertainty of litigating.[28]

### *B. ''Hot News'' Misappropriation*

Separate from copyright, U.S. press publishers have at times asserted ''hot news'' misappropriation claims to protect against the taking of their time-sensitive news items. This cause of action, established by the Supreme Court in *International News Service* v. *Associated Press*[29] during World War I, bars free riding on a competitor's investment at the moment in time when the competitor was poised to reap the rewards.[30] Because *International News Service* was based on no-longer extant federal common law[31] and pre-dated the 1976 Copyright Act and modern First Amendment jurisprudence,[32] this tort's continued viability is unclear. In one of the first modern cases to consider a hot news misappropriation claim under New York state law, the Second Circuit in *NBA* v. *Motorola* held that only a narrow version of the theory survived preemption by the Copyright Act.[33] Indeed, most courts faced with hot news misappropriation claims since *Motorola* have found them to be either preempted or insufficiently proven.[34] For example, in *Barclays Capital, Inc.* v. *Theflyonthewall.com, Inc.,* the Second Circuit held that the Copyright Act preempted a hot news misappropriation claim under New York law based on the defendant's publication of plaintiff's time-sensitive stock recommendations, notwithstanding the fact that the recommendations at issue may not have been copyrightable.[35] This holding suggests that even if a hot news misappropriation claim could be brought against a news aggregator, it would face a significant hurdle in avoiding preemption by the Copyright Act.

## III. International Developments

Citing concerns for the continued viability of their news industries, several national and regional legislatures have considered or enacted new forms of legal protection for press publishers in recent years. These generally fall into one of two models: An extension of copyright or copyright-like protections, or regulation of the terms of competition and negotiation between the publishers and online intermediaries.

### *A. Ancillary Copyright*

In 2019, as part of the Directive on Copyright in the Single Digital Market (''CDSM Directive''), the European Union required Member States to grant press publishers an ''ancillary'' right in the content of their press publications.[36] The EU's approach took inspiration from laws previously adopted in Germany and Spain. The German law, enacted in 2013 and later invalidated on procedural grounds, provided press publishers an exclusive right to make their work available to the public for commercial purposes.[37] The Spanish law, by contrast, grants press publishers a non-waivable right of remuneration.[38]

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of law on fair use defense where aggregated index of blog content also allowed users to view full text of articles without navigating to the original source); *Associated Press* v. *Meltwater U.S. Holdings, Inc.,* 931 F. Supp. 2d 537, 545 (S.D.N.Y. 2013) (finding news monitoring service's reproduction and distribution of excerpts of online news articles was not fair use). *Cf. Video Pipeline, Inc.* v. *Buena Vista Home Entmt.,* 342 F.3d 191, 200 (3d Cir. 2003) (rejecting fair use defense of a service that compiled movie clips into a commercial database of movie trailers).

[28] *See, e.g.,* Jeffrey A. Trachtenberg and Keach Hagey, *Google to Pay News Corp for Access to Its Publications' Content,* Wall Street J. (Feb. 17, 2021), *https://www.wsj.com/articles/google-to-pay-news-corp-for-access-to-its-publications-content-11613592397* (reporting three-year licensing deal between Google and News Corp.); Benjamin Mullin and Sahil Patel, *Facebook Offers News Outlets Millions of Dollars a Year to License Content,* Wall Street J. (Aug. 8, 2019), *https://www.wsj.com/articles/facebook-offers-news-outlets-millions-of-dollars-a-year-to-license-content-11565294575* (reporting that Facebook was seeking licenses from news outlets for proposed news section).

[29] 248 U.S. 215 (1918).

[30] *Int'l News Serv.* v. *Associated Press,* 248 U.S. 215, 230–31 (1918).

[31] *See* United States Copyright Office, Report on Legal Protections for Databases 82 (1997), *https://www.copyright.gov/reports/db4.pdf* (noting abrogation of federal common law generally by the Supreme Court in *Erie R.R.* v. *Tompkins,* 304 U.S. 64, 78 (1938)).

[32] *See Abrams* v. *United States,* 250 U.S. 616 (1919); *Schenck* v. *United States,* 249 U.S. 47 (1919).

[33] 105 F.2d 841, 845 (2d Cir. 1997) (limiting hot news claims to cases where: ''(i) a plaintiff generates or gathers information at a cost; (ii) the information is time-sensitive; (iii) a defendant's use of the information constitutes free-riding on the plaintiff's efforts; (iv) the defendant is in direct competition with a product or service offered by the plaintiffs; and (v) the ability of other parties to free-ride on the efforts of the plaintiff or others would so reduce the incentive to produce the product or service that its existence or quality would be substantially threatened.''); *see also id.* at 853 (explaining that the ''extra elements'' needed for a hot news claim to survive preemption are ''(i) the time-sensitive value of factual information, (ii) the free-riding by a defendant, and (iii) the threat to the very existence of the product or service provided by the plaintiff'').

[34] *See, e.g., Brantley* v. *Epic Games, Inc.,* 463 F. Supp.3d 616, 626 (D. Md. 2020); *IPOX Schuster, LLC* v. *Nikko Asset Mgmt. Co.,* 304 F. Supp. 3d 746, 757 (N.D. Ill. 2018); *Thousand Oaks Barrel Co.* v. *Deep S. Barrels LLC,* 241 F. Supp. 3d 708, 725 (E.D. Va. 2017) (holding Virginia does not recognize the tort of hot news misappropriation); *Scrappost, LLC* v. *Peony Online, Inc.,* No. 14–14761, 2017 WL 697028, at *8 (E.D. Mich. Feb. 22, 2017); *World Chess US, Inc.* v. *Chessgames Servs. LLC,* No. 16 CIV. 8629 (VM), 2016 WL 7190075, at *4 (S.D.N.Y. Nov. 22, 2016); *Ste. Genevieve Media, LLC* v. *Pulitzer Mo. Newspapers, Inc.,* No. 1:16 CV 87 ACL, 2016 WL 6083796, at *5 (E.D. Mo. Oct. 18, 2016). *But see Dow Jones & Co.* v. *Real-Time Analysis & News, Ltd.,* No. 14–CV–131 (JMF)(GWG), 2014 WL 4629967, at *7 (S.D.N.Y. Sept. 15, 2014), *report and recommendation adopted,* No. 14–CV–131 (JMF)(GWG), 2014 WL 5002092 (S.D.N.Y. Oct. 7, 2014) (granting damages on plaintiff's hot news misappropriation claim).

[35] 650 F.3d 876, 902 (2d Cir. 2011). Applying the *NBA* v. *Motorola* factors, the court found: (i) The recommendations were works of authorship within the general subject-matter of the Copyright Act; (ii) plaintiff's alleged ''hot news'' right in the recommendations could be violated by copying and distribution that, on their own, would violate the Copyright Act; and (iii) there was no evidence that the defendants were ''free-riding'' in the sense previously recognized in hot news cases. *Id.*

[36] Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC, 2019 O.J. (L 130) 92, 92–125, *https://eur-lex.europa.eu/eli/dir/2019/790/oj.* An ''ancillary'' or ''neighboring'' right is one that does not belong to the author of the copyrighted work. *See* Meghan Sali, *What the Heck is Ancillary Copyright and Why Do We Call it the Link Tax?,* Open Media (May 5, 2016), *https://openmedia.org/article/item/what-heck-ancillary-copyright-and-why-do-we-call-it-link-tax.* In this case, the term ''ancillary copyright'' arises because press publishers are not the authors of the news materials at issue, but will nonetheless have the right to authorize or prohibit certain uses of the materials.

[37] *See* European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive 14 (2017) (providing an English translation of the German press publisher statute), *https://op.europa.eu/en/publication-detail/-/publication/9f45daff-c437-11e7-9b01-01aa75ed71a1/language-en/format-PDF/source-206447220.* The law covered snippets, but did not apply to individual words or ''very short text excerpts,'' or mere linking. In 2019, the Court of Justice of the European Union ruled the law was unenforceable for procedural reasons. *See* Jan Bernd Nordemann & Stefanie Jehle (Nordemann), *VG Media/Google: German Press Publishers' Right Declared Unenforceable by the CJEU for Formal Reasons—But It Will Soon Be Re-born,* Kluwer Copyright Blog (Nov. 11, 2019), *http://copyrightblog.kluweriplaw.com/2019/11/11/vg-media-google-german-press-publishers-right-declared-unenforceable-by-the-cjeu-for-formal-reasons-but-it-will-soon-be-re-born/.*

[38] *See* Raquel Xalabarder, *The Remunerated Statutory Limitation for News Aggregation and Search Engines Proposed by the Spanish Government: Its Compliance with International and EU Law* (2014), *infojustice.org/wp-content/uploads/2014/10/xalabarder.pdf.* In response to the law, Google shut down Google News in Spain. Eric Auchard, *Google to Shut Down News Site in Spain Over Copyright Fees,* Reuters (Dec. 11, 2014), *https://www.reuters.com/article/us-google-spain-news/google-to-shut-down-news-site-in-spain-over-copyright-fees-idUSKBN0JP0QM20141211.* Both the law and Google News's shutdown in Spain persist.

Under Article 15 of the CDSM Directive, for two years following the initial publication of press publications, publishers have the right to authorize or prohibit third-party online service providers from reproducing them or making them available to the public.[39] This right does not apply to: (i) Non-commercial uses by individual users; (ii) hyperlinking to, without reproducing, news content; (iii) the use of individual words or very short extracts; (iv) uses in works contained in academic periodicals; (v) any uses otherwise permitted by EU copyright law, such as the making of incidental copies as a result of lawful transmissions or quotations for purposes of criticism or commentary; or (vi) mere facts.[40] Article 15 applies only to ''journalistic publications,'' and not to ''websites, such as blogs, that provide information as part of an activity that is not carried out under the initiative, editorial responsibility and control of a service provider, such as a news publisher.'' [41] This focus on news publishers as the beneficiaries resulted from a public consultation ''on the role of publishers in the copyright value chain'' more broadly.[42]

EU Member States had until June 7, 2021 to fully implement the CDSM. To date, Article 15 has been implemented by France, the Netherlands, Hungary, Germany, Malta, and Denmark.[43] The European Commission has commenced legal proceedings against other member states for failing to implement the CDSM by the deadline.[44]

*B. Competition Law*

The second, competition-law-based approach to addressing the relationship between news publishers and online intermediaries can take many forms,[45] but the most-discussed initiative has been Australia's mandatory bargaining law. In 2021 Australia passed a law requiring Google and Facebook, specifically, to negotiate with press publishers over compensation for the value the publishers' stories generate on the two companies' platforms.[46] Any news organization can notify Google or Facebook of its intent to bargain under the law.[47] Compensation terms may account for the value the publisher derives from Google's or Facebook's use of its material—in other words, Google can argue that its royalty rate should be lower because it drives traffic to the publisher's site.[48] If, after three months of bargaining, the parties have not reached an agreement, an arbitration panel makes a binding decision on the rate of remuneration.[49] Because Australia's law is not copyright-based, the bargaining right applies to *all* news content, including headlines and snippets, not just material protected by copyright.[50]

*Subjects of Inquiry:* The Copyright Office seeks public input, including empirical data where available, on the issues described above. In particular, the Office invites written comments on three issues: (i) The effectiveness of current protections for press publishers under U.S. law; (ii) whether additional protections for press publishers are desirable and, if so, what the scope of any such protections should be; and (iii) how any new protections for press publishers in the United States would relate to existing rights, exceptions and limitations, and international treaty obligations.

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[39] *See* Directive 2019/790, of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC, art. 15(4), 2019 O.J. (L 130) 92, 92–125, *https://eur-lex.europa.eu/eli/dir/2019/790/oj.*

[40] *See* Directive 2019/790, of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC, art. 15(1–4), 2019 O.J. (L 130) 92–125, *https://eur-lex.europa.eu/eli/dir/2019/790/oj.*

[41] Directive 2019/790, of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC, 2019 O.J. (L 130) 92, 104, *https://eur-lex.europa.eu/eli/dir/2019/790/oj.*

[42] *See* European Commission, *Public Consultation on the Role of Publishers in the Copyright Value Chain and on the 'Panorama Exception',* European Commission, *https://ec.europa.eu/eusurvey/runner/Consultation_Copyright?surveylanguage=EN#page1* (last visited Aug. 11, 2021).

[43] *See DSM Directive Implementation Tracker,* Communia (last visited July 28, 2021), *https://www.notion.so/DSM-Directive-Implementation-Tracker-361cfae48e814440b353b32692bba879.* Italy has adopted a ''delegation law'' implementing the CDSM. As noted above, Spain has a press publisher's law that predates, but is in some respects inconsistent with, Article 15 of the CDSM. French law requires news aggregators to share with publishers data on how readers use the reproduced press material. Loi 2019–775 du 24 juillet 2019 tendant à créer un droit voisin au profit des agences de presse et des éditeurs de presse [Law 2019–775 of July 24, 2019 on the Creation of Neighboring Rights for the Benefit of Press Agencies and Publishers], Journal Officiel de la République Française [J.O.][Official Gazette of France], July 26, 2019; Diana Passinke, *An Analysis of Articles 15 and 17 of the EU Directive on Copyright in the Digital Single Market: A Boost for the Creative Industries or the Death of the internet?* (Stanford-Vienna Eur. Union L. Working Paper No. 49, 2020), *http://ttlf.stanford.edu.* These laws have continued to provoke controversy. Shortly before France's implementing law became effective, Google announced that it would no longer display snippets of results from European press publishers as part of search results in France, unless a publisher opts in to the display free of charge. French press publisher unions sued Google, and France's competition authority declared that Google would have to negotiate remuneration to press publishers in good faith. *See* Natasha Lomas, *France's Competition Watchdog Orders Google to Pay for News Reuse,* TechCrunch (Apr. 9, 2020), *https://techcrunch.com/2020/04/09/frances-competition-watchdog-orders-google-to-pay-for-news-reuse/.* Google has since signed contracts with several French publishers. *See* Tom Hirche, *Google Signs Contracts with a Handful of French Publishers,* IGEL (Nov. 24, 2020), *https://ancillarycopyright.eu/news/2020-11-24/google-signs-contracts-handful-french-press-publishers.* In July of 2021, France's competition authority fined Google over $500 million for failure to negotiate in good faith. *See* Associated Press, *France Fines Google $592M in a Dispute Over Paying News Publishers for Content,* NPR (Jul. 13, 2021), *https://www.npr.org/2021/07/13/1015596060/france-fines-google-592m-in-a-dispute-over-paying-news-publishers-for-content.*

[44] *See Most EU Countries Not Enacting Copyright Laws,* Portugal News (Jul. 26, 2021), *https://www.theportugalnews.com/news/2021-07-26/most-eu-countries-not-enacting-new-copyright-laws/61315.*

[45] For example, in the United States, the proposed Journalism Competition and Preservation Act of 2021 would create a four-year safe harbor from antitrust laws for print, broadcast, or digital news companies to collectively negotiate with online content distributors. S. 673, 117th Cong. sec. 2 (2021).

[46] Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021 (Cth) (Austl.), *https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6652_aspassed/toc_pdf/20177b01.pdf.* The law also included a set of minimum standards for providing advance notice of changes to algorithmic ranking and presentation of news.

[47] Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021 (Cth) (Austl.), *https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6652_aspassed/toc_pdf/20177b01.pdf.*

[48] Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021 (Cth) (Austl.), *https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6652_aspassed/toc_pdf/20177b01.pdf.*

[49] Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021 (Cth) (Austl.), *https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6652_aspassed/toc_pdf/20177b01.pdf.*

[50] Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021 (Cth) (Austl.), *https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6652_aspassed/toc_pdf/20177b01.pdf.* Opponents of Australia's approach, including Google, have argued that it rests on a misunderstanding of the economic forces affecting press publishers and undermines the ''principle of unrestricted linking between websites.'' [50] Mel Silva, *Mel Silva's Opening Statement to the Senate Economics Committee Inquiry,* Google: The Keyeword (Jan. 22, 2021), *https://blog.google/around-the-globe/google-asia/australia/mel-silvas-opening-statement/.* Facebook initially protested the law by blocking news sharing in Australia, but restored service after Australia amended the law to include a two-month mediation period and to accommodate pre-existing deals between Facebook and news publishers. Elizabeth Dwoskin, *Facebook, Australia Reach Deal to Restore News Pages After Shutdown,* Wash. Post (Feb. 23, 2021), *https://www.washingtonpost.com/technology/2021/02/22/facebook-news-australia-deal/; see also* Kelly Buchanan, *Australia: New Legislation Establishes Code of Conduct for Negotiations between News Media and Digital Platforms over Payments for Content,* Libr. Congress: Global Legal Monitor (Feb. 26, 2021), *https://www.loc.gov/law/foreign-news/article/australia-new-legislation-establishes-code-of-conduct-for-negotiations-between-news-media-and-digital-platforms-over-payments-for-content/.*

A party choosing to respond to this Notice of Inquiry need not address every issue, but the Office requests that responding parties clearly identify and separately address each question for which they submit a response. The Office also requests that responding parties identify their affiliation and the factual or legal basis for their responses.

The Effectiveness of Current Protections for Press Publishers

(1) Copyright ownership of news content.

(a) For a given type of news publication, what is the average proportion of content in which the copyright is owned by the publisher compared to the proportion licensed by the publisher on either an exclusive or non-exclusive basis?

(b) For content in which the press publisher owns the copyright, what is typically the basis for ownership: Work-for-hire or assignment?

(2) Third-party uses of news content.

(a) Under what circumstances does or should aggregation of news content require a license? To what extent does fair use permit news aggregation of press publisher content, or of headlines or short snippets of an article?

(b) Are there any obstacles to negotiating such licenses? If so, what are they?

(c) To what extent and under what circumstances do aggregators seek licenses for news content?

(d) What is the market impact of current news aggregation practices on press publishers? On the number of readers? On advertising revenue?

(e) Does the impact of news aggregation vary by the size of the press publisher, or the type of content being published (*e.g.,* national or local news, celebrity news)? If so, how?

(f) Do third-party uses of published news content other than news aggregation have a market impact on press publishers? What are those uses and what is the market impact? Do such uses require a license or are they permitted by fair use?

(3) Existing non-copyright protections for press publishers.

(a) What non-copyright protections against unauthorized news aggregation or other unauthorized third party uses of news content are available under state or federal law in the United States? To what extent are they effective, and how often are they relied upon?

The Desirability and Scope of Any Additional Protections for Press Publishers

(1) To what extent do the copyright or other legal rights in news content available to press publishers in other countries differ from the rights they have in the United States?

(2) In countries that have granted ancillary rights to press publishers, what effect have those rights had on press publishers' revenue? On authors' revenue? On aggregators' revenues or business practices? On the marketplace?

(3) In countries that have granted ancillary rights to press publishers, are U.S. press publishers entitled to remuneration for use of their news content? Would adoption of ancillary rights in the United States affect the ability of U.S. press publishers to receive remuneration for use of their news content overseas?

(4) Should press publishers have rights beyond existing copyright protection under U.S. law? If so:

(a) What should be the nature of any such right—an exclusive copyright right, a right of remuneration, or something else?

(b) How should ''press publishers'' be defined?

(c) What content should be protected? Should it include headlines?

(d) How long should the protection last?

(e) What activities or third party uses should the right cover?

(f) If a right of remuneration were granted, who would determine the amount of remuneration and on what basis? Should authors receive a share of remuneration, and if so, on what basis?

(5) Would the approach taken by the European Union in Article 15 of the CDSM, granting ''journalistic publications'' a two-year exclusive right for certain content, be appropriate or effective in the United States? Why or why not?

(6) Would an approach similar to Australia's arbitration requirement work in the United States? Why or why not?

(7) If you believe press publishers should have additional protections, should these or similar protections be provided to other publishers as well? Why or why not? If so, how should that class of publishers be defined and what protections should they receive?

The Interaction Between Any New Protections and Existing Rights, Exceptions and Limitations, and International Treaty Obligations

(1) Would granting additional rights to publishers affect authors' ability to exercise any rights they retain in their work? If so, how?

(2) Would granting additional rights to press publishers affect the ability of users, including news aggregators, to rely on exceptions and limitations? If so, how?

(3) Would granting additional rights to press publishers affect United States compliance with the Berne Convention or any other international treaty to which it is a party?

Other Issues

(1) Please provide any statistical or economic reports or studies on changes over time in the economic value of a typical news article following the date of publication.

(2) Please provide any statistical or economic reports or studies that demonstrate the effect of aggregation on press publishers or the impact of protections in other countries such as those discussed above on press publishers and on news aggregators.

(3) Please identify any pertinent issues not mentioned above that the Copyright Office should consider in conducting its study.

Dated: October 5, 2021.

**Shira Perlmutter,**

*Register of Copyrights and Director of the U.S. Copyright Office.*

[FR Doc. 2021–22077 Filed 10–8–21; 8:45 am]

**BILLING CODE 1410–30–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Proposed Designation of Databases for Treasury's Working System Under the Do Not Pay Initiative

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of Proposed Designation.

**SUMMARY:** The Payment Integrity Information Act of 2019 (PIIA) provides that the Office of Management and Budget (OMB) may designate additional databases for inclusion in Treasury's Working System under the Do Not Pay (DNP) Initiative. PIIA further requires OMB to provide public notice and an opportunity for comment prior to designating additional databases. In fulfillment of this requirement, OMB is publishing this Notice of Proposed Designation to designate the National Association of Public Health Statistics and Information Systems (NAPHSIS) Electronic Verification of Vital Events (EVVE) Facts of Death (FOD) System. This notice has a 30-day comment period.

**DATES:** Please submit comments on or before November 12, 2021. At the conclusion of the 30-day comment period, if OMB decides to finalize the designation, OMB will publish a notice in the **Federal Register** to officially designate the database.

*Please note* that all public comments received are subject to the Freedom of Information Act and will be posted in their entirety, including any personal and/or business confidential information provided. Do not include any information you would not like to be made publicly available.

**ADDRESSES:** Comments may be sent by mail or electronic mail (email).

The Office of Management and Budget, Attn: OFFM, 725 17th Street NW, Washington, DC 20503. *MBX.OMB.OFFM.PaymentIntegrity@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Regina Kearney at (202) 395–3993.

**SUPPLEMENTARY INFORMATION:** PIIA recodifies the DNP Initiative that was already under way across the Federal Government.[1] The DNP Initiative includes multiple resources that are designed to help Federal agencies, the judicial and legislative branches of the Federal Government, and certain State agencies review payment and award eligibility for purposes of identifying and preventing improper payments. As part of the DNP Initiative, OMB designated Treasury to host the Working System, which is the primary system through which DNP customers can verify payment and award eligibility.

Pursuant to PIIA,[2] OMB has the authority to designate additional databases for inclusion in the DNP Initiative.[3] Appendix C to OMB Circular No. A–123, Management's Responsibility for Enterprise Risk Management and Internal Control,[4] provides guidance related to PIIA and states that OMB ''may designate other databases that substantially assist'' in preventing improper payments.[5]

## Treasury Working System Privacy, Security, and Legal Implications

All Treasury Working System users and administrators are required to sign rules of behavior stipulating their responsibilities to minimize risks and support DNP's mission to ''conduct a thorough review of databases and help verify eligibility and prevent [improper and unknown payments] prior to the release of Federal funds.'' Treasury has also dedicated resources to establish a privacy program based on applicable requirements, the Fair Information Practice Principles (FIPPs), and industry best practices. Treasury's privacy program supports various internal controls in collaboration with Treasury leadership and legal counsel. Projects are vetted through a data usage governance process to ensure compliance with privacy requirements in law and policy and manage risk associated with the use of specific data to reduce improper payments for Treasury's customers and Government agencies.

Risk mitigation measures for Treasury's Working System include maintaining a current and compliant Security Accreditation and Authorization (SA&A) package, in accordance with Federal Information Security Management Act (FISMA) requirements. Additionally, to reduce the likelihood of unauthorized access, login to Treasury's Working System requires public key infrastructure (PKI) or personal identity verification (PIV) credentials.

## Considerations for Designating NAPHSIS EVVE FOD

OMB proposes to designate NAPHSIS EVVE FOD for inclusion in Treasury's Working System. As the most comprehensive private provider of state vital records and a partner of state vital records offices, NAPHSIS can provide information to researchers, organizations, and government organizations to facilitate the verification of birth and death records.

Treasury's Working System would benefit from more comprehensive verification of death records from state agencies. Currently, Treasury's Working System provides verification of death records to its customers using several databases, but is limited in its ability to verify the existence of a death certificate reported by a state. Designation of EVVE FOD as a database in Treasury's Working System would improve and streamline access for Working System customers to verify death certificates. Currently, customers must access state vital records from each state office. Access to EVVE will centralize access to many states' offices through a single portal.

Use of EVVE FOD within Treasury's Working System would also allow for its users to access state death records that are available in the Social Security Administration's Full Death Master File (DMF), which would otherwise be restricted from use for many programs by statute.[6] The DMF includes state death records and other information. Agencies are not prohibited from obtaining death information directly from state vital records offices or through commercial portals like EVVE.[7] Death data from state vital records offices are the authoritative source for death information. Including EVVE FOD will also allow the Treasury Working System to examine the quality of existing and potential data sources that provide death data by using an authoritative source.

OMB has considered Treasury's recommendation and assessment of the suitability of EVVE FOD Data for designation of inclusion within Treasury's Working System. OMB proposes to designate EVVE FOD Data for inclusion in Treasury's Working System. Treasury's suitability assessment, which evaluates the suitability of EVVE FOD Data, is attached. Treasury's assessment considers factors identified in OMB Circular A–123 Appendix C section (IV)(E) established by OMB M–18–20, which has been superseded by OMB M–21–19. Appendix C requires that ''OMB-established procedures and criteria will be followed to determine whether database are designated into the Treasury Working System or included in the Initiative outside of the Treasury Working System.'' As OMB prepares guidance on those procedures and criteria, OMB will still apply pre-existing guidance and criteria from M–18–20, because M–18–20's guidance and criteria is derived from similar statutory provisions in IPERIA, the predecessor to PIIA.

Accordingly, for this request, OMB is considering the same factors as listed in M–18–20. These factors are: (1) Statutory or other limitations on the use and sharing of specific data; (2) privacy restrictions and risks associated with specific data; (3) likelihood that the data will strengthen program integrity across programs and agencies; (4) benefits of streamlining access to the data through the central DNP Initiative; (5) costs associated with expanding or centralizing access, including modifications needed to system interfaces or other capabilities in order to make data accessible; and (6) other policy and stakeholder considerations, as appropriate:

1. *Statutory or other limitations on the use and sharing of specific data:* There are no statutory or other limitations that would prevent including the EVVE FOD database within Treasury's Working

[1] The Improper Payments Elimination and Recovery Improvement Act of 2012, Public Law 112–248, first codified the DNP Initiative.

[2] 31 U.S.C. 3351–58.

[3] 31 U.S.C. 3354(b)(1)(B). OMB designated the Department of the Treasury to host Treasury's Working System, which helps Federal agencies verify that their payments are proper. Treasury's Working System is part of the broader DNP Initiative.

[4] OMB Memorandum M–21–19, ''Transmittal of Appendix C to OMB Circular A–123, Requirements for Payment Integrity Improvement'' (March 5, 2021).

[5] *Id.* at 31.

[6] 42 U.S.C. 405(r).

[7] Id.

System for the purposes of verifying payment, award eligibility, and analytical projects.

2. *Privacy restrictions and risks associated with specific data:* Treasury assessed privacy restrictions and risks in discussions with NAPHSIS. When Treasury initiates matching with EVVE, DNP will only receive matching results on data provided to DNP (*i.e.,* data on individuals already existing within the working system). Treasury will receive matched data from NAPHSIS with the deceased individual's Social Security Number, name, date of birth and date of death information. EVVE data is taken directly from State Vital Statistics Databases and is not owned by NAPHSIS. Data is gathered through an Application Programming Interface (API) and is not altered prior to displaying results to the user at the agency. Policies, practices and procedures relating to the monitoring, auditing, or evaluation of the accuracy of personally identifiable information are determined by the State that owns the record. EVVE FOD currently has agreements in place with each State to address data correction. Treasury evaluated EVVE FOD in various areas, including a data quality assessment at the attribute level, and at the level of the source as a whole. Per-data element measures include quantifications of accuracy, coverage, and conformity. Whole-source measures include assessments of the freshness, completeness, and uniqueness of all records. These six assessments factors, some of which are multi-part, reduce to six quantitative scores, and these six scores are combined into an overall data source quality benchmark. The quality assessment was performed on a snapshot of the data source compared to payment data from August 2020 to February 2021.

EVVE FOD contains information only on deceased individuals. Deceased individuals are not afforded Privacy Act protections. Therefore, the data gathered from state vital records offices and the information on individuals are not covered by the Privacy Act.

Treasury has also not identified any additional Privacy Act restrictions or risks for DNP to make this commercial database available in Treasury's Working System. Treasury's use of the EVVE FOD matching results does not include information on survivors of the deceased individual and no other involved parties will have any information disclosed. Treasury will also receive only limited information about the deceased, namely, the Social Security Number, name, date of birth and date of death information. Treasury already receives similar information in verifying death data when using other databases within the DNP Initiative. Upon reviewing the privacy restrictions and risks of EVVE FOD, Treasury has determined that the limited information disclosed and the controls supporting this database are sufficient to address any privacy concerns.

3. *Likelihood that the data will strengthen program integrity across programs and agencies:* Designating EVVE FOD would strengthen program integrity. Including EVVE FOD would allow Treasury's Working System to provide access to state records that are not currently included in the Social Security Administration's Limited Access Death Master File (LADMF). Since a significant number of improper payments are made to deceased individuals each year, providing the Working System's customers access to these additional records could help them identify additional potentially improper payments. Additionally, EVVE FOD provides an independent source of death data which will reduce the amount of time for agencies to decide on a payment to a deceased individual. EVVE FOD data can also be used for data quality evaluations and to assist with data standardization to ensure accuracy of records. Each of these benefits will help assure citizens that Treasury and the Government are acting as good-faith stewards of taxpayer dollars. The results of a Treasury analysis of EVVE FOD were applied to the payments currently being screened against other DNP death databases and found that, after applying assumptions to account for false positives, EVVE FOD is estimated to save the government roughly $489.9 million over a ten-year period.

4. *Benefits of streamlining access to the data through the central DNP Initiative:* It would be beneficial to streamline access to EVVE FOD through its inclusion in Treasury's Working System. Some of DNP's customers are agencies that issue payments to beneficiaries. Including EVVE FOD in Treasury's Working System will allow for faster and more accurate execution of such payments. Benefit-paying agencies, and other payment-issuing DNP customers, would be able to check EVVE FOD along with the other databases in Treasury's Working System. This will enable agencies to make more informed payment decisions and payment verifications, which will increase efficiency and strengthen internal controls.

5. *Costs associated with expanding or centralizing access, including modifications needed to system interfaces or other capabilities in order to make data accessible:* There will be some additional costs associated with expanding or centralizing access to EVVE FOD. Currently, EVVE FOD costs $8,750 per month for an annual cost of $105,000. Adjusting for inflation it is estimated that over a ten-year period, EVVE will cost the Government $1.15 million. However, Treasury has performed a trial assessment with respect to EVVE FOD, which compared nearly 10 million death and payment records with EVVE FOD in order to determine which payments would result in matches. Agency-specific business rules identified in Treasury's current processes were then applied to reduce false positives. The results of this assessment were applied to the payments currently being screened against other DNP death databases and found that, after applying assumptions to account for false positives, EVVE FOD is estimated to save the government roughly $489.9 million over a ten-year period. Accounting for the purchase of death certificates from State Vital Statistics Databases, this amounts to a potential ROI of over 42,613%.

6. *Other policy and stakeholder considerations:* No additional stakeholder considerations were identified.

We invite public comments on the proposed designation of the database described in this notice.

**Deidre A. Harrison,**

*Acting Controller, Office of Federal Financial Management.*

[FR Doc. 2021–22094 Filed 10–8–21; 8:45 am]

**BILLING CODE 3110–01–P**

## MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

### Sunshine Act Meetings

**TIME AND DATE:** 9:00 a.m. to 1:30 p.m. (PDT), Thursday, October 28, 2021.

**PLACE:** The University of Arizona President's Office Conference Room, Old Main, Room 200, 1200 East University Boulevard, Tucson, Arizona 85721.

**STATUS:** This meeting will be open to the public. Due to COVID–19, members of the public who would like to attend this meeting may request remote access by contacting Elizabeth Monroe at *monroe@udall.gov* prior to October 28 to obtain the teleconference connection information.

**MATTERS TO BE CONSIDERED:** (1) Call to Order and Chair's Remarks; (2) University of Arizona President's Remarks and Welcome; (3) Executive

Director's Remarks; (4) Consent Agenda Approval (Minutes of the April 28, 2021, Board of Trustees Meeting; Board Reports submitted for Education Programs; Finance and Internal Controls; John S. McCain III National Center for Environmental Conflict Resolution; Native Nations Institute for Leadership, Management, and Policy and its Work Plan; The University of Arizona Libraries, Special Collections; Udall Center for Studies in Public Policy and its Work Plan; resolutions regarding Allocation of Funds to the Udall Center for Studies in Public Policy and The University of Arizona Libraries, Special Collections and Funds Set Aside for the Native Nations Institute for Leadership, Management, and Policy; and Board takes notice of any new and updated personnel policies and internal control methodologies); (5) Update on and Board Takes Notice of 2022–2026 Udall Foundation Strategic Plan Final Draft; (6) Update on and Board Takes Notice of U.S. Department of the Interior Office of Inspector General Preliminary Audit Findings and Recommendations; (7) Planning for Morris K. Udall Centennial Birthday Celebration; (8) Udall Foundation Grants, Gifts, and Donation Policy Update; (9) Leveraging Udall Foundation Funding to Expand and Enhance the University of Arizona Programs; (10) Native American Graduate Fellowship Program Update; and (11) Native American and Alaska Native (NAAN) and Climate Service Areas Update.

**CONTACT PERSON FOR MORE INFORMATION:** David P. Brown, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: October 6, 2021.

**David P. Brown,**

*Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.*

[FR Doc. 2021–22197 Filed 10–7–21; 8:45 am]

**BILLING CODE 6820–FN–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: (21–064)]**

### Heliophysics Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Advisory Committee (HPAC). This Committee functions in an advisory capacity to the Director, Heliophysics Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

**DATES:** Wednesday, October 27, 2021, 2:00 p.m.–6:30 p.m., Eastern Time.

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public. The meeting will take place telephonically and via WebEx. Any interested person must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free number 1–877–939–1570, or toll number 1–210–234–0110, passcode 9775739 followed by the # sign to participate in this meeting by telephone on both days. The WebEx link is *https://nasaenterprise.webex.com/;* the meeting number is 2762 919 5180 and the password is OctHPAC2021! (case sensitive).

The agenda for the meeting includes the following topics:

- Heliophysics Program Annual Performance Review According to the Government Performance and Results Act Modernization Act.
- Heliophysics Division Update.

**FOR FURTHER INFORMATION CONTACT:** Dr. Janet Kozyra, Designated Federal Officer, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, at *janet.kozyra@nasa.gov,* 202–875–3278.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

**Patricia Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2021–22150 Filed 10–8–21; 8:45 am]

**BILLING CODE 7510–13–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–1151; NRC–2021–0158]**

### Westinghouse Electric Company, LLC; Columbia Fuel Fabrication Facility; and US Ecology, Inc.; Idaho Resource Conservation and Recovery Act Subtitle C Hazardous Disposal Facility Located Near Grand View, Idaho

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant impact; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) related to a request for alternate disposal, exemptions, and associated license amendment for the disposition of waste containing byproduct material and special nuclear material (SNM) from the Westinghouse Electric Company, LLC's (WEC) Columbia Fuel Fabrication Facility (CFFF) in Hopkins, South Carolina, under License Number SNM–1107. The material would be transported to and disposed of at the US Ecology, Inc. (USEI) disposal facility located near Grand View, Idaho, which is a Subtitle C Resource Conservation and Recovery Act (RCRA) hazardous waste disposal facility permitted by the State of Idaho to receive low-level radioactive waste. The NRC is also considering the related action of approving corresponding exemptions to USEI. Approval of the alternate disposal request from WEC, the exemptions requested by WEC and USEI, and a conforming license amendment to WEC would allow WEC to transfer specific waste from CFFF for disposal at USEI.

**DATES:** The EA and FONSI referenced in this document are available on October 12, 2021.

**ADDRESSES:** Please refer to Docket ID NRC–2021–0158 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0158. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may 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.* For the convenience of the reader, instructions about obtaining materials referenced in this document

are provided in the ''Availability of Documents'' section.

• *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* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** David Tiktinsky, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8740, email: *David.Tiktinsky@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

By letter dated June 1, 2021, as supplemented on September 14, 2021, WEC requested exemptions and an associated license amendment to License SNM–1107, issued for the operation of the CFFF located in Hopkins, South Carolina pursuant to section 20.2002 of title 10 of the *Code of Federal Regulations* (10 CFR). By letter dated September 14, 2021, USEI incorporated the supplemented WEC application in its request for corresponding exemptions. The requests are for NRC authorization for an alternate disposal of NRC-licensed byproduct and SNM from the CFFF. As required by 10 CFR 51.21, the NRC conducted an EA. Based on the results of the EA that follows, the NRC has determined that pursuant to 10 CFR 51.31, preparation of an environmental impact statement for the exemption request is not required and pursuant to 10 CFR 51.32, issuance of a FONSI is appropriate.

WEC submitted a 10 CFR 20.2002 Alternate Disposal Request (ADR) on May 8, 2020 with a corresponding exemption request from USEI on May 11, 2020. NRC staff reviewed and approved the request on December 9, 2020, along with the corresponding exemptions for USEI. Following approval, WEC determined that the volume of material considered was incorrect. To resolve the issue WEC submitted a second request, dated February 8, 2021. NRC staff performed a review of the second request and issued an updated safety evaluation report (SER) evaluating both requests on March 11, 2021. On June 1, 2021, WEC submitted another ADR for the disposal of additional material from CFFF. On September 14, 2021, in a response to an NRC staff request for additional information (RAI), WEC supplemented and narrowed its June 1, 2021 request for the disposal of calcium fluoride ($CaF_2$) sludge containing byproduct material and SNM. WEC stated that the other waste material types discussed in the June 1, 2021 request will be addressed in the response to the NRC staff's RAI at a later time and are not considered here.

This ADR considers the remainder of the $CaF_2$ sludge pile from which the $CaF_2$ sludge evaluated in the amended request approved on March 11, 2021 originated. The previous review only approved a portion of the $CaF_2$ sludge pile for disposal. The staff's review of the request is documented in its SER.

## II. Environmental Assessment

### *Description of the Proposed Action*

WEC and USEI requested NRC approval for a 10 CFR 20.2002 alternate disposal request, exemptions to 10 CFR part 70.3 and 10 CFR 30.3, and a conforming WEC license amendment to allow WEC to transfer 133,000 $ft^3$ of $CaF_2$ sludge containing byproduct material and SNM from CFFF for disposal at the USEI disposal facility. The $CaF_2$ to be disposed of is generated from CFFF site operations and previously stored in onsite lagoons. The lagoons are periodically dredged and the resulting $CaF_2$ sludge is placed in piles on the site for drying prior to disposal. The $CaF_2$ sludge considered under this request is contaminated with SNM (low enriched uranium {<5wt% U–235}).

As proposed, this waste would be transported from CFFF in South Carolina to the USEI facility near Grand View, Idaho. The USEI facility is a RCRA Subtitle C hazardous waste disposal facility permitted by the State of Idaho. The USEI site has both natural and engineered features that limit the transport of radioactive material. The natural features include a low precipitation rate [*i.e.,* 18.4 cm/year (7.4 in./year)] and a long vertical distance to groundwater (*i.e.,* 61-meter (203-ft) thick on average unsaturated zone below the disposal zone). The engineered features include an engineered cover, liners, and leachate monitoring systems. Because the USEI facility is not licensed by the NRC, this proposed action requires the NRC to exempt USEI from the Atomic Energy Act of 1954, and NRC licensing requirements with respect to USEI's requested receipt and disposal of this material.

### *Need for the Proposed Action*

The need for the proposed action is to authorize a safe and appropriate method of disposal for the $CaF_2$ sludge generated during day-to-day activities and currently being stored at the CFFF. The proposed action would also conserve low-level radioactive waste disposal capacity at licensed low-level radioactive disposal sites while ensuring that the material being considered is disposed of safely in a regulated facility.

### *Environmental Impacts of the Proposed Action*

The NRC staff reviewed the information provided by WEC to support their 10 CFR 20.2002 alternate disposal request and for USEI's specific exemptions from 10 CFR 30.3 and 10 CFR 70.3 in order to dispose of the $CaF_2$ waste. Under the 10 CFR 20.2002 criteria, a licensee may seek NRC authorization to dispose of licensed material using procedures not otherwise authorized by NRC regulations. The licensee's supporting analysis must show that the radiological doses arising from the proposed 10 CFR 20.2002 disposal will be as low as reasonably achievable and within the 10 CFR part 20 dose limits.

As documented in the SER, the NRC staff concluded that the requested alternate disposal of 133,000 $ft^3$ of $CaF_2$ sludge is acceptable under 10 CFR 20.2002. Details provided in this request, in combination with past reviews considering similar material from the same site, provide an adequate description of the waste and the proposed manner and conditions of waste disposal. As documented in the SER and consistent with the NRC staff's review of WEC's February 8, 2021 request, a dose assessment concluded that potential doses to members of the public, including transportation workers and USEI workers involved in processing and disposing of the waste upon its arrival at USEI, are less than 1 mrem/y, well within the ''few mrem'' criteria that the NRC established (see NUREG–1757, Volume 1, Revision 2). NRC staff also notes that the request is also subject to regulation under RCRA.

NRC staff also considered non-radiological impacts associated with the proposed action. NRC staff concludes that approval of the proposed request would not have significant environmental impacts on non-radiological effluents, air quality, or noise. In addition, approval of the proposed action will not significantly increase the probability or consequences of accidents associated with the transport and disposal of the $CaF_2$ sludge.

Therefore, due to the very small amounts of radioactive material involved, the evaluation previously

noted, and the NRC staff's analysis in the SER, the NRC staff finds that the environmental impacts of the proposed action are not significant.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered the no-action alternative in which the NRC staff would deny the disposal request. Denial of the request would require WEC to find another disposal pathway for this material and would ultimately only change the location of the disposal site. All other factors would remain the same or similar. Therefore, the no-action alternative was not further considered.

*Agencies and Persons Consulted*

In accordance with its stated policy, on September 29, 2021, the staff consulted with the South Carolina Department of Health and Environmental Control and the Idaho Department of Environmental Quality regarding the environmental impacts of the proposed action. The State officials concurred with the EA and FONSI.

## III. Finding of No Significant Impact

The proposed action consists of NRC approval of (a) WEC's and USEI's alternate disposal requests under 10 CFR 20.2002, (b) WEC and USEI's exemption request under 10 CFR 30.11(a) and 10 CFR 70.17(a), the issuance of a conforming license amendment to WEC. Based on this EA, the NRC finds that there are no significant environmental impacts from the proposed action. Therefore, the NRC has determined, pursuant to 10 CFR 51.31, that preparation of an environmental impact statement is not required for the proposed action and a FONSI is appropriate.

## IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

| Document | ADAMS accession No. |
|---|---|
| Request for Alternate Disposal Approval and Exemption for Specific Columbia Fuel Fabrication Facility Waste (License No. SNM-1197, Docket No. 70–1151), dated May 8, 2020. | ML20129J934 (Package). |
| Request for Exemptions under 10 CFR 30.11 and 10 CFR 70.17 for Alternate Disposal of Wastes from Columbia Fuel Fabrication Facility under 10 CFR 20.2002, dated February 25, 2021. | ML21061A273. |
| Request for Exemptions under 10 CFR 30.11 and 10 CFR 70.17 for Alternate Disposal of Wastes from Columbia Fuel Fabrication Facility Under 10 CFR 20.2002, dated May 11, 2020. | ML20280A601. |
| US Ecology Exemption for Alternate Disposal of Specific Waste from the Westinghouse Columbia Fuel Fabrication Facility under 10 CFR 20.2002, 10 CFR 30.11 and 10 CFR 70.17, dated December 9, 2020. | ML20304A341. |
| Westinghouse Electric Company, LLC—Amendment 25 to Material License SNM–1107, Exemption for Alternate Disposal of Specific Waste (Enterprise Project Identifier L–2020-LII-0009), dated December 9, 2020. | ML20302A083 (Package). |
| Request for Alternate Disposal Approval and Exemption for Specific Columbia Fuel Fabrication Waste (Docket No. 70–1151, Material License SNM–1107), dated February 8, 2021. | ML21039A719. |
| Westinghouse Electric Company, LLC—Amendment 26 to Material License SNM–1107, Exemption for Alternate Disposal of Specific Waste (Enterprise Project Identifier L–2021–LLA–0013), dated March 11, 2021. | ML21064A225. |
| U.S. Ecology Exemption for Alternate Disposal of Specific Waste from the Westinghouse Columbia Fuel Fabrication Facility under 10 CFR 20.2002, 10 CFR 30.11 and 10 CFR 70.17, dated March 11, 2021. | ML21061A277 (Package). |
| Request for Exemptions Associated with Disposal and Transportation of Specified Columbia Fuel Fabrication Waste (Docket No. 70–1151, Special Nuclear Material License SNM–1107), dated June 1, 2021. | ML21153A001. |
| Safety Evaluation Report for Request or Alternate Disposal Approval and Exemptions from Disposal of Columbia Fuel Fabrication Facility Waste to the US Ecology Idaho Facility, dated October 4, 2021. | ML21202A110 (Package). |
| Request for Alternate Disposal Request, Revised Scope Review and Approval (Docket No. 70–1151), dated September 14, 2021. | ML21257A439. |
| Request for Exemptions under 10 CFR 30.11 and 10 CFR 70.17 for Alternate Disposal of Wastes from Columbia Fuel Fabrication Facility under 10 CFR 20.2002, dated September 14, 2021. | ML21258A221. |
| Letter from the Idaho Department of Environmental Quality entitled "Review of the Draft Environmental Assessment related to an alternative disposal request from Westinghouse Columbia Fuel Fabrication Facility (CFFF) for disposal of $CaF_2$ Sludge," dated October 4, 2021. | ML21278A525. |
| Email from Ken Taylor of the South Carolina Department of Health and Environmental Control entitled "Review of Draft Environmental Assessment for Westinghouse Columbia alternative disposal request," dated September 30, 2021. | ML21278A524. |

Dated: October 6, 2021.

For the Nuclear Regulatory Commission.

**Jacob I. Zimmerman,**

*Chief, Fuel Facility Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2021–22154 Filed 10–8–21; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–0305; NRC–2021–0185]**

## Kewaunee Power Station and Independent Spent Fuel Storage Installation; Consideration of Approval of Transfer of License and Conforming Amendment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Application for indirect transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC, the Commission) received and is considering approval of an application filed by Dominion Energy Kewaunee, Inc. (the licensee) and Energy*Solutions,* LLC (Energy*Solutions*) on May 10, 2021, as supplemented by letter dated May 13, 2021. The application seeks NRC approval of the indirect transfer of control of Renewed Facility Operating License No. DPR–43 for Kewaunee Power Station (Kewaunee) and the general license for the Kewaunee independent spent fuel storage installation (ISFSI) from Dominion Nuclear Projects, Inc. (Dominion), the parent entity of the licensee, to

Energy*Solutions.* As part of the proposed transfer, the name of the licensee would be changed to Kewaunee Solutions, Inc. (Kewaunee Solutions). The NRC is also considering amending the renewed facility operating license for administrative purposes to reflect the proposed transfer. The application contains sensitive unclassified non-safeguards information (SUNSI).

**DATES:** Comments must be filed November 12, 2021. Requests for a hearing or petitions for leave to intervene must be filed by November 1, 2021. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must follow the instructions in Section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

**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–2021–0185. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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:** Karl J. Sturzebecher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8534, email: *Karl.Sturzebecher@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2021–0185 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–2021–0185.
- *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.* The ''Dominion Energy Kewaunee, Inc. Kewaunee Power Station Application for Order Approving Transfer of Control of [Kewaunee] License and Conforming License Amendments,'' dated May 10, 2021, is available in ADAMS under Accession No. ML21131A141 and the ''Notification of Amended Post-Shutdown Decommissioning Activities Report (Revision 2) for Kewaunee Power Station,'' dated May 13, 2021, is available in ADAMS under Accession No. ML21145A083.
- *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* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), 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–2021–0185 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 the issuance of an order under 10 CFR 50.80 and 72.50 approving the indirect transfer of control of Renewed Facility Operating License No. DPR–43 for Kewaunee and the general license for the Kewaunee ISFSI from Dominion, the parent entity of the licensee, to Energy*Solutions.* As part of the proposed transfer, the name of the licensee would be changed to Kewaunee Solutions. The NRC is also considering amending the renewed facility operating license for administrative purposes to reflect the proposed transfer.

According to the application, Energy*Solutions* would acquire 100 percent ownership of the licensee, the same legal entity would remain the Kewaunee licensee, but its name would change to Kewaunee Solutions, and Kewaunee Solutions would operate under new management and be directly and wholly owned by Energy*Solutions.*

No physical changes to Kewaunee are being proposed in the application.

The NRC's regulations at 10 CFR 50.80 and 72.50 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an ISFSI, which does no more than conform the license to reflect the transfer action involves no significant hazards consideration and no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments

with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

**III. Opportunity To Comment**

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

**IV. Opportunity To Request a Hearing and Petition for Leave To Intervene**

Within 20 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. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 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).

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. 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).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

**V. 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 further discussed, 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,* 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,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 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 previously described, 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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated May 10, 2021 (ADAMS Accession No. ML21131A141), as supplemented on May 13, 2021 (ADAMS Accession No. ML21145A083).

### VI. Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the applicant by telephoning Craig Sly at 804–273–2784 or 804–241–2473 for the purpose of negotiating a confidentiality agreement or a proposed protective order with the applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated: October 5, 2021.

For the Nuclear Regulatory Commission.

**Bruce A. Watson,**

*Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2021–22093 Filed 10–8–21; 8:45 am]

**BILLING CODE 7590–01–P**

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### Privacy Act of 1974; System of Records

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Occupational Safety and Health Review Commission (OSHRC) is revising the notice for Privacy Act system-of-records OSHRC–7.

**DATES:** Comments must be received by OSHRC on or before November 12, 2021. The revised system of records will become effective on November 29, 2021, without any further notice in the **Federal Register**, unless comments or government approval procedures necessitate otherwise.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Email: rbailey@oshrc.gov.* Include ''PRIVACY ACT SYSTEM OF RECORDS'' in the subject line of the message.
- *Fax:* (202) 606–5417.
- *Mail:* One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.
- *Hand Delivery/Courier:* same as mailing address.

*Instructions:* All submissions must include your name, return address, and email address, if applicable. Please clearly label submissions as ''PRIVACY ACT SYSTEM OF RECORDS.''

**FOR FURTHER INFORMATION CONTACT:** Ron Bailey, Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606–5410, or via email at *rbailey@oshrc.gov.*

**SUPPLEMENTARY INFORMATION:** The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires federal agencies such as OSHRC to publish in the **Federal Register** notice of any new or modified system of records.

In accordance Executive Order 13869, ''Executive Order on Transferring Responsibility for Background Investigations to the Department of Defense'' (April 24, 2019), the

Department of Defense's Defense Counterintelligence and Security Agency will conduct personnel background investigations for OSHRC. This function was previously performed by the Office of Personnel Management. The system-of-records notice, OSHRC–7, has been revised to account for this change.

In addition, OSHRC recently revised its Privacy Act regulations, 29 CFR part 2400, which resulted in the renumbering of its regulatory provisions. 85 FR 65222 (Oct. 15, 2020). OSHRC is therefore revising the following elements in this system-of-records notice to reference the correct sections of the agency's Privacy Act regulations: Record Access Procedures, Contesting Record Procedures, and Notification Procedures.

The notice for OSHRC–7, provided below in its entirety, is as follows.

**SYSTEM NAME AND NUMBER:**

Personnel Security Records, OSHRC–7.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

The Office of the Executive Director maintains the records in this system. The office is located at 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457.

**SYSTEM MANAGER(S):**

Human Resources Specialist, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457; (202) 606–5100.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

E.O. 13467, as amended; E.O. 13488, as amended; E.O. 13764; E.O. 13869; Homeland Security Presidential Directive (HSPD) 12; and Federal Information Processing Standard (FIPS) 201.

**PURPOSE(S) OF THE SYSTEM:**

The information collected by OSHRC allows the Department of Defense's Defense Counterintelligence and Security Agency (DCSA) and, previously, the Office of Personnel Management (OPM), to conduct background investigations on those individuals being credentialed, assist in verifying the identity of those for whom credentials have been requested, and provide the necessary information for issuance of identification and access cards.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system of records covers current OSHRC employees, contractors, and Commission members, and, as to records concerning office access cards, also former employees, contractors, and Commission members.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system of records may include an individual's name and former names; signature; date and place of birth; social security number; citizenship information; residential history; education; employment history; criminal history and police records; names of associates and references, and their contact information; military history and selective service record; illegal drug activities; telephone numbers; hair and eye color, weight, and height; gender; financial records; investigative records; foreign countries visited; marital status and name, date and place of birth, address, and social security number of spouse; names of certain relatives who work for the government; names, addresses, dates and countries of birth, and citizenship of certain relatives. As to office access cards, the records include only the individual's name, and the date that the access card was activated, deactivated, and turned in. Most of the records concerning background investigations conducted by OPM, before this function was transferred to DCSA, are decentralized copies from OPM and remain subject to the practices and policies set forth in system-of-records notice OPM/CENTRAL–9 (Personnel Investigations Records). Copies of records from DCSA that are maintained in OSHRC's files are covered only by system-of-records notice OSHRC–7.

**RECORD SOURCE CATEGORIES:**

Information contained in the system is obtained from individuals subject to the credentialing process, OSHRC employees involved in the credentialing process, and investigative record materials furnished by DCSA or OPM.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

(1) To the Department of Justice (DOJ), or to a court or adjudicative body before which OSHRC is authorized to appear, when any of the following entities or individuals—(a) OSHRC, or any of its components; (b) any employee of OSHRC in his or her official capacity; (c) any employee of OSHRC in his or her individual capacity where DOJ (or OSHRC where it is authorized to do so) has agreed to represent the employee; or (d) the United States, where OSHRC determines that litigation is likely to affect OSHRC or any of its components—is a party to litigation or has an interest in such litigation, and OSHRC determines that the use of such records by DOJ, or by a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation.

(2) To an appropriate agency, whether federal, state, local, or foreign, charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes civil, criminal or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.

(3) To a federal, state, or local agency maintaining civil, criminal or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to an OSHRC decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit.

(4) To a federal, state, or local agency, in response to that agency's request for a record, and only to the extent that the information is relevant and necessary to the requesting agency's decision in the matter, if the record is sought in connection with the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit by the requesting agency.

(5) To an authorized appeal grievance examiner, formal complaints manager, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee, only to the extent that the information is relevant and necessary to the case or matter.

(6) To OPM in accordance with the agency's responsibilities for evaluation and oversight of federal personnel management.

(7) To officers and employees of a federal agency for the purpose of conducting an audit, but only to the extent that the record is relevant and necessary to this purpose.

(8) To OMB in connection with the review of private relief legislation at any stage of the legislative coordination and clearance process, as set forth in Circular No. A–19.

(9) To a Member of Congress or to a person on his or her staff acting on the Member's behalf when a written request is made on behalf and at the behest of the individual who is the subject of the record.

(10) To the National Archives and Records Administration (NARA) for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

(11) To appropriate agencies, entities, and persons when: (a) OSHRC suspects or has confirmed that there has been a breach of the system of records; (b) OSHRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OSHRC, the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OSHRC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(12) To NARA, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

(13) To another federal agency or federal entity, when OSHRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) 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 on paper in locked file cabinets.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records are retrieved by an individual's name.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Office access card records are retained and disposed of in accordance with NARA's General Records Schedule 5.6, Item 21. However, paper copies of personnel security records from DCSA or OPM are shredded once an employee, contractor, or Commission member no longer works at OSHRC.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Records are maintained in a locked file cabinet. Access to the cabinet is limited to personnel having a need for access to perform their official functions.

**RECORD ACCESS PROCEDURES:**

Individuals who wish to gain access to their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.4 (procedures for requesting notification of and access to personal records).

**CONTESTING RECORD PROCEDURES:**

Individuals who wish to contest their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457. For an explanation on the specific procedures for contesting the contents of a record, refer to 29 CFR 2400.6 (procedures for amending personal records), and 29 CFR 2400.7 (procedures for appealing).

**NOTIFICATION PROCEDURES:**

Individuals interested in inquiring about their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036–3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.4 (procedures for requesting notification of and access to personal records).

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

April 14, 2006, 71 FR 19556; August 4, 2008, 73 FR 45256; October 5, 2015, 80 FR 60182; September 28, 2017, 82 FR 45324; and August 30, 2018, 83 FR 44309.

**Nadine N. Mancini,**

*Senior Agency Official for Privacy.*

[FR Doc. 2021–22135 Filed 10–8–21; 8:45 am]

**BILLING CODE 7600–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2022–2 and CP2022–2]**

## New Postal Product

**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:* October 13, 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.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–2 and CP2022–2; *Filing Title:* USPS Request to Add Parcel Select Contract 48 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 5, 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:* October 13, 2021.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2021–22113 Filed 10–8–21; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93263; File No. SR–NYSE–2021–58]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reformat the Designated Market Makers Section of the NYSE Price List

October 5, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 30, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 reformat the section of the NYSE Price List setting forth Fees and Credits Applicable to Designated Market Makers (''DMMs'') without any substantive changes. The Exchange proposes to implement the fee changes effective immediately.[4] The Exchange proposes to implement the fee changes effective immediately. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes to reformat the section of the NYSE Price List setting forth Fees and Credits Applicable to DMMs without any substantive changes. The Exchange proposes to implement the fee changes effective immediately.

The Exchange proposes the following non-substantive changes to reorganize and enhance the presentation in the Price List in order to add clarity and transparency, thereby making the Price List easier to navigate.

First, the Exchange would delete the current presentation of the DMM rates and requirements in its entirety. The Exchange would also delete footnotes 5, 6, 7, and * that would be relocated to new footnotes or the new section marked ''General.'' In order to maintain the current numbering of the footnotes, the Exchange would mark footnotes 5, 6 and 7 ''Reserved.''

Second, the Exchange proposes a table presentation of the current DMM rates and requirements. The proposed changes would appear in the Price List in six tables.

Under the existing heading ''Fees and Credits applicable to Designated Market Makers (''DMMs'')'' and before the first table, the Exchange would include a heading marked ''General'' followed by 7 bullets, as follows.

Bullet 1 would clarify that ''DMM Additional Quoting'' refers to DMM increased quoting at the National Best Bid or Offer (''NBBO'') by at least 5% over the DMM's quoting at the NBBO in September 2019, in at least 300 assigned securities. This information is unchanged from the current Price List.

Bullet 2 would clarify that ''DMM Providing Liquidity'' refer to DMM orders that provide liquidity to the NYSE as a percentage of the NYSE's total intraday adding liquidity. This information is also unchanged from the current Price List.

Bullet 3 would clarify that ''DMM NBBO Quoting'' means DMM quoting at the NBBO.

Bullet 4 would clarify that ''DMM Quoted Size'' is calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO.

Bullet 5 would clarify that ''Less Active Securities'' refers to securities

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on September 24, 2021 (SR–NYSE–2021–55). SR–NYSE–2021–55 was subsequently withdrawn and replaced by this filing.

that have an average daily consolidated volume (''Security CADV'') of less than 1,000,000 shares per month in the previous month.

Bullet 6 would clarify that ''NYSE Quoted Size'' is calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO.

The final bullet would clarify that ''More Active Securities'' refers to securities with a Security CADV in the previous month at least 1,000,000 (shares per month).

The information in these bullets would be transposed from the current Price List without change.

The first table would follow the proposed General section and appear under the phrase ''Rebate Per Share* when adding liquidity, other than MPL Orders for stock price of at least $1.00 for DMM symbols that meet the following requirements:'' from the current Price List. The table would summarize the current DMM rebates and requirements for providing liquidity to the Exchange as well as the additional credits available to DMMs if the additional quoting requirements are met. The requirements and credits are unchanged. The proposed table would appear as follows in the Price List:

MINIMUM REQUIREMENTS

| Security | DMM NBBO quoting (%) | DMM quoted size (%) | DMM providing liquidity (%) | Credit | Additional credit if DMM meets additional quoting requirement |
|---|---|---|---|---|---|
| More Active Securities | 10 | 5 | | $0.0027 | $0.0004 |
| | 20 | 10 | **5 | 0.0031 | 0.0003 |
| | 30 | 15 | **15 | 0.0034 | 0.0001 |
| | 50 | 25 | **15 | 0.0035 | |
| | | | | 0.0015 | 0.0012 |
| Less Active Securities | 15 | | | 0.0035 | 0.0010 |
| | 30 | | | 0.0045 | |
| | | | | 0.0015 | 0.0020 |

Current footnote 6 would be transposed to new footnote * without change. The DMM providing liquidity requirement to qualify for the three eligible credits in a month where NYSE CADV is at least 5.5 billion shares and the notation that, unless otherwise stated, the NYSE total intraday adding liquidity will be totaled monthly and includes all NYSE adding liquidity, by all NYSE participants, would be consolidated into a new footnote ** without substantive change.

The second table would set forth the rates and requirements for the DMM incremental rebate for more active securities. The chart and presentation would be unchanged from the current Price List, as follows:

| | |
|---|---|
| Incremental Rebate Per Share for each More Active Security with a stock price of at least $1.00 on current rebates of $0.0034 or less, in a month where NYSE CADV is equal to or greater than 4.0 billion shares, when adding liquidity with orders, other than MPL Orders, in such securities and the DMM has providing liquidity in all assigned securities as a percentage of NYSE CADV that is an increase of 0.30% more than the DMM's April 2020 providing liquidity in all assigned securities as a percentage of NYSE CADV. | $0.0002 per share in each eligible assigned More Active Security. |

The third table would appear under the phrase ''DMM NBBO Setter Tier Credit—Incremental Rebate Per Share for securities with a stock price of at least $1.00 in Tape A, B and C Securities, when adding liquidity, other than MPL Orders, for DMMs with providing liquidity in all assigned securities as a percentage of NYSE CADV of all assigned securities as follows'' and would set forth the current DMM setter tier credits and requirements unchanged from the current Price List, as follows:

| Minimum requirement as a percentage of NYSE CADV | | Credit for adding orders that set the NBBO | Credit for adding orders that set the BBO | Credit for all other adding orders, other than MPL Orders |
|---|---|---|---|---|
| Providing liquidity | Providing liquidity setting the NBBO or BBO combined | Liquidity indicator: ASP | Liquidity Indicator: ASB, AJP | |
| 0.65 | 0.120 | | $0.00005 | |
| 0.90 | 0.225 | $0.0002 | 0.000075 | 0.00005 |
| 1.25 | 0.375 | 0.0003 | 0.0001 | 0.0001 |

The fourth table would set forth other equity per share charges unchanged from the current Price List and would appear as follows under the heading ''Other Equity Per Share Charges'':

| | |
|---|---|
| Taking liquidity | $0.00275. |
| At the opening, at the opening only orders or executions at the close. | No Charge. |
| Routing Fee*** | $0.0030. |
| Routing Fee—in any stock with a per share stock price below $1.00. | 0.3% of the total dollar value of the transaction. |

| | |
|---|---|
| Rebate per Share *—for all MPL orders in securities with a per share price of at least $1.00 that add liquidity. | $0.00275. |
| Rebate * when adding liquidity in shares of More Active Securities if the More Active Security has a stock price of less than $1.00. | $0.0004. |
| Rebate * when adding liquidity in shares of Less Active Securities if the Less Active Security has a stock price of less than $1.00. | $0.0004. |

Current footnotes * and 5 would be transposed to footnote + and ***, respectively, without change. As noted above, footnote 6 would be transposed from the current Price List to new footnote * without change.

The fifth table would set forth the rates and requirements for the DMM rebate for less active securities. The rates and requirements would be unchanged from the current Price List and would appear as follows:

| Security CADV in the previous month | Minimum requirement for DMM quoting at the NBBO and credit per symbol | | | | |
|---|---|---|---|---|---|
| | 15% | 20% | 30% | 40% | 50% |
| 250,000 up to 1,500,000 shares | $200.00 | $275.00 | $350.00 | $425.00 | $500.00 |
| 100,000 up to 250,000 shares | 150.00 | 225.00 | 300.00 | 375.00 | 450.00 |
| less than 100,000 shares | 100.00 | 175.00 | 250.00 | 325.00 | 400.00 |

The final table would set forth the DMM share of the market data quote revenue, known as the Quoting Share, received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS unchanged from the current Price List and would appear as follows:

| DMM share of the market data quote revenue (the ''Quoting Share'') received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any security that has a Security CADV of less than 1,500,000 shares in the previous month (regardless of whether the stock price exceeds $1.00) in any month in which the DMM quotes at the NBBO at least 20% of the time in the applicable month as follows: | | |
|---|---|---|
| Minimum requirement: DMM NBBO Quoting | 15% | 20% |
| DMM share of the Quoting Share if meeting the above DMM NBBO Quoting Requirement | 50% | 100% |

As noted above, the Exchange is not proposing any substantive change to any current DMM fee, credit or requirement. The purpose of the proposed rule change is to make a non-substantive change to reorganize the presentation of the Price List in order to enhance its clarity and transparency, thereby making the Price List easier to comprehend and navigate.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes are reasonable and equitable because they are clarifying and non-substantive, and the Exchange is not changing any current fees or credits that apply to DMM trading activity on the Exchange or to routed executions. The changes are designed to make the Price List easier to read and more user-friendly. The Exchange believes that this proposed format will provide additional transparency of Exchange fees and credits for DMMs, to the benefit of market participants and the investing public. The Exchange believes the change is reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all member organizations that are DMMs, and again, the Exchange is not making any changes to existing fees and credits. Finally, the Exchange believes that the reformatted Price List, as proposed, will be clearer and less confusing for investors and will eliminate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes that the proposed reformatted the Price List is equitable and not unfairly discriminatory because the resulting streamlined Price List would continue to apply to all DMMs as it does currently because the Exchange is not adopting any new fees or credits or removing any current fees or credits that impact DMMs. All DMMs would continue to be subject to the same fees and credits that currently apply to them.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[8] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*Intramarket Competition.* The Exchange's proposal to reformat its Price List will not place any undue burden on intramarket competition that is not necessary or appropriate in

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(8).

furtherance of the purposes of the Act because all DMMs would continue to be subject to the same fees and credits that currently apply to them. The Exchange notes that the proposal does not change the amount of any current fees or rebates, but rather makes clarifying and formatting changes, and therefore does not raise any competitive issues. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that a streamlined Price List would promote clarity and reduce confusion with respect to the fees and credits that DMMs would be subject to. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. Market share statistics provide ample evidence that price competition between exchanges is fierce, with liquidity and market share moving freely from one execution venue to another in reaction to pricing changes.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4 [10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [11] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2021–58 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–NYSE–2021–58. 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–NYSE–2021–58, and should be submitted on or before November 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–22076 Filed 10–8–21; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2:00 p.m. on Thursday, October 14, 2021.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that

may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

*Authority:* 5 U.S.C. 552b.

Dated: October 7, 2021.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–22243 Filed 10–7–21; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–93261; File No. SR–MSRB–2021–04]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Consisting of Proposed Amendments to MSRB Rule G–10, on Investor and Municipal Advisory Client Education and Protection, and MSRB Rule G–48, on Transactions With Sophisticated Municipal Market Professionals, To Amend Certain Dealer Obligations

October 5, 2021.

### I. Introduction

On August 2, 2021, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of amendments to MSRB Rule G–10, on investor and municipal advisory client education and protection, and MSRB Rule G–48, on transactions with Sophisticated Municipal Market Professionals (''SMMPs'') (collectively, the ''proposed rule change'').

The proposed rule change was published for comment in the **Federal Register** on August 20, 2021.[3] The public comment period closed on September 10, 2021.[4] The Commission received two comment letters on the proposed rule change.[5] On September 28, 2021, the MSRB responded to those comments[6] and filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[7] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested parties and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

### II. Description of Proposed Rule Change

As described more fully in the Notice and Amendment No. 1, the MSRB stated that the purpose of the proposed amendments to MSRB Rule G–10 is to clarify the scope of the requirements for brokers, dealers and municipal securities dealers (collectively, ''dealer'' or ''dealers'') to provide the required notifications under MSRB Rule G–10 to those customers who would best be served by the receipt of the information.[8] Additionally, the MSRB stated that the purpose of proposed corresponding amendments to MSRB Rule G–48 is to exclude SMMPs from certain requirements under MSRB Rule G–10.[9]

*1. Background*

The MSRB has stated that MSRB Rule G–10, as designed, serves to educate and protect investors and municipal advisory clients by providing them with information about the MSRB rules designed to protect them and the process for filing a complaint with the appropriate regulatory authority.[10] MSRB Rule G–10 currently requires dealers and municipal advisors (collectively, ''regulated entities'') to provide certain notifications to customers and municipal advisory clients, respectively, once every calendar year. More specifically, MSRB Rule G–10 requires regulated entities to provide, in writing, which may be made electronically, the following information (''required notifications''): (i) A statement that the regulated entity is registered with the SEC and the MSRB; (ii) the website address for the MSRB; and (iii) a statement as to the availability to the customer or municipal advisory client of a brochure that is available on the MSRB's website that describes the protections that may be provided by MSRB rules, and how to file a complaint with an appropriate regulatory authority.[11]

The MSRB stated that it conducted a review of the obligations under MSRB Rule G–10, given that it believed there had been a reasonable implementation period of the rule in its current form to allow the MSRB time to obtain meaningful insight on the operation of the rule.[12] The MSRB noted that it identified an opportunity to reduce certain compliance burdens by re-evaluating the potential benefits of the rule to better align the scope of the rule's application.[13] The MSRB indicated that the proposed rule change is specific to the dealer obligations under MSRB Rule G–10.[14] The MSRB is not proposing to modify municipal advisors' obligations under MSRB Rule G–10 because, according to the MSRB, municipal advisors' MSRB G–10 obligations are already limited in scope.[15] According to the MSRB, the obligation dealers currently have under MSRB Rule G–10 is broader in that each dealer must provide the required notifications to all customers, including SMMPs, even if those customers have not effected any transaction in municipal securities and may never effect a transaction in municipal securities.[16]

The MSRB has noted that MSRB Rule G–48 underscores the differences between dealer obligations to non-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–92677 (August 16, 2021) (the ''Notice''), 86 FR 46890 (August 20, 2021) (MSRB–2021–04).

[4] All comment letters received on the proposed rule change are available on the Commission's website at *https://www.sec.gov.*

[5] *See* Letter to Secretary, from Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated September 10, 2021 (the ''SIFMA Letter''); Letter to Secretary, Commission, from Michael Decker, Senior Vice President, Bond Dealers of America (''BDA''), dated September 10, 2021 (the ''BDA Letter'').

[6] *See* Letter to Secretary, Commission, from Gail Marshall, Chief Regulatory Officer, MSRB, dated September 28, 2021 (the ''MSRB Response Letter'').

[7] *Id.* As described in Amendment No. 1, the MSRB stated it proposed to amend the original proposed rule change to make a small change directly responsive to comments.

[8] *See* Notice at 46890.

[9] Under MSRB Rule D–9, a ''customer'' means ''any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities.''

[10] *See* Notice at 46890 and 46891.

[11] See MSRB's ''Information for Municipal Securities Investors,'' available at *https://www.msrb.org/~/media/Files/Resources/MSRB-Investor-Brochure.ashx?la=en* and ''Information for Municipal Advisory Clients,'' available at *https://www.msrb.org/~/media/Files/Resources/MSRB-MA-Clients-Brochure.ashx?la=.*

[12] *See* Notice at 46891.

[13] *Id.*

[14] *Id.*

[15] Under MSRB Rule G–10, a municipal advisor must provide the required notifications promptly after the establishment of a municipal advisory relationship, as defined in MSRB Rule G–42(f)(v), or promptly, after entering into an agreement to undertake a solicitation, as defined in Rule 15Ba1–1(n), 17 CFR 240.15Ba1–1(n), under the Act, and then no less than once each calendar year thereafter during the course of that agreement. *See* Notice at 46891.

[16] *See* MSRB Request for Input on Strategic Goals and Priorities, (December 7, 2020) *available at https://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2020-19.ashx??n=1,* with a comment period deadline of January 11, 2021.

SMMP customers and SMMP customers.[17] Given the MSRB's belief in the sophistication of SMMPs, the MSRB determined that a modification to MSRB Rule G–48 was warranted to avoid the imposition of regulatory burdens upon dealers where they appear to be unnecessary.[18]

*2. MSRB Rule G–10 and Supplementary Material*

[19] As part of the proposed rule change, the MSRB proposed amendments to MSRB Rules G–10(a), (b), and (c) and proposed the addition of new supplementary material.

a. Proposed Rule Change to MSRB Rule G–10(a)

The proposed rule change to MSRB Rule G–10(a) requires dealers to provide required notifications to those customers for whom a purchase or sale of a municipal security was effected and to each customer who holds a municipal securities position. The proposed rule change also makes technical amendments to MSRB Rule G–10(a) by deleting the current clause (a)(ii) and placing the reference to the MSRB's website address within the proposed amended provision that re-numbers clause (a)(iii) of Rule G–10 to clause (a)(ii).[20]

The MSRB believes that narrowing the scope of the rule to those customers that engage in municipal securities transactions would reduce the burden of remitting the notifications unnecessarily to all customers, while ensuring that dealers remit the notifications to customers who would most benefit from receiving them.[21]

b. Proposed Rule Change to MSRB Rule G–10(b)

The proposed change to MSRB Rule G–10(b) requires each dealer to have the required notifications available on its website for the benefit of customers who do not receive the notifications directly pursuant to MSRB Rule G–10(a). According to the MSRB, this change will insure that these customers will have access to them under MSRB Rule G–10(b).[22] As a result, the MSRB does not believe there is a detrimental impact to such customers and believes that not receiving the notifications may avoid confusion for customers who currently receive such notifications even though they have not effected a municipal securities transaction or hold municipal securities.[23]

c. Proposed Rule Change to MSRB Rule G–10(c)

The proposed amendment to MSRB Rule G–10(c), as modified by Amendment No. 1, would provide that any dealer that does not have customers, or that agrees with a carrying dealer servicing its customer accounts that the carrying dealer will comply with the required notification requirements, would be exempt from the MSRB Rule G–10(a) requirements.[24] The MSRB recognizes that customer accounts may be held at other dealers, subject to a carrying agreement, and that the carrying dealers are responsible for providing account statements and trade confirmations.[25] Therefore, according to the MSRB, the proposed amendment to MSRB Rule G–10(c), as modified by Amendment No. 1, is meant to acknowledge common business practices and facilitate carrying dealers' compliance with the requirement to provide notifications under the rule, on behalf of other dealers.[26] Further, the MSRB believes the proposed rule change promotes regulatory consistency with section (b)(2) of FINRA Rule 2267, on Investor Education and Protection, which provides that any member that does not have customers or is a party to a carrying agreement where the carrying firm member complies with the rule is exempt from the requirements of the rule.[27]

Additionally, the proposed rule change expressly clarifies that the dealer would not be subject to the notifications requirement, under MSRB Rule G–10(a), in cases where dealers conduct a limited business and are not considered to have customers.[28]

d. Proposed Rule Change To Add New Supplementary Material to MSRB Rule G–10

The proposed rule change includes the addition of new supplementary material under MSRB Rule G–10 that the MSRB states would provide clarity on the timeframe for delivery of the required notifications.[29] Supplementary Material .01 of MSRB Rule G–10 would make clear that the obligation to provide the required notifications once each calendar year to applicable customers would be deemed satisfied if dealers deliver the required notifications at a given point in each calendar year, so long as any customers that effected a transaction in municipal securities or held municipal securities after that given date in each calendar year receive the notifications within the following rolling 12-month period.[30] More explicitly, after a dealer provides the required notifications to the applicable customers, the ensuing notifications must be provided within 12 months from the date of the preceding notifications, but may be provided within a shorter time or with more frequency.[31] The MSRB believes that the proposed amendments would foster greater flexibility with respect to the timing of the required notifications, and would also ensure that each applicable customer receives the required notification within a rolling 12-month period; and thereby, ease operational concerns.[32]

*3. Proposed Rule Change to MSRB Rule G–48*

The proposed rule change also amends MSRB Rule G–48 to modify a dealer's obligation under MSRB Rule G–10.[33] The proposed amendment adds section (f) to MSRB Rule G–48, which would allow a dealer to make the notifications available on its website rather than remit the notifications to an SMMP pursuant to MSRB Rule G–10(a).[34] The MSRB believes that customers who meet the definition of SMMPs under MSRB Rule D–15 are sophisticated in their understanding of the municipal market.[35] The MSRB believes that in the event an SMMP is seeking the information found in the required notifications, including the MSRB's website address, dealer registration status and how to file a complaint with the appropriate regulatory agency, a sophisticated customer is likely to know the information or seek access to it from the dealer's or MSRB's website.[36] The MSRB believes the modified obligation dealers have with respect to SMMPs in proposed section (f) of MSRB Rule G–48 is in keeping with the placement of other modified obligations for transactions with SMMPs under MSRB

[17] *See* Notice at 46891.

[18] *Id.*

[19] *See* MSRB's ''Information for Municipal Securities Investors,'' *available at https://www.msrb.org/~/media/Files/Resources/MSRB-Investor-Brochure.ashx?la=en* and ''Information for Municipal Advisory Clients,'' *available at https://www.msrb.org/~/media/Files/Resources/MSRB-MA-Clients-Brochure.ashx?la=*.

[20] *See* Notice at 46892.

[21] *Id.* at 46891.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 46891; *See also* Amendment No. 1.

[25] *Id.*

[26] *Id.*

[27] *See* Notice at 46891 and 46892.

[28] *Id.* at 46892.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *See* Notice at 46892.

[33] *Id.* at 46891.

[34] *Id.*

[35] *Id.*

[36] *Id.*

Rule G–48.[37] Further, the MSRB believes the proposed amendment to MSRB Rule G–48 balances the burden on dealers to remit the required notifications to SMMPs against the usefulness of SMMPs receiving such notifications when the information is otherwise readily available.

**III. Summary of Comments Received and MSRB's Response**

As noted previously, the Commission received two comment letters on the proposed rule change, as well as the MSRB Response Letter and Amendment No. 1.

Both commenters indicated support for many elements of the proposed rule change.[38] The commenters believed the proposed rule change would reduce the compliance burden on the dealer community, render cost savings, and reduce the environmental impact of the notification process; all while maintaining investor protections and market transparency.[39] However, both commenters raised the concern that as currently proposed the rule change would relieve an introducing broker of its obligation to make disclosures only if the introducing broker is a party to a carrying agreement in which the carrying dealer has agreed to comply with the disclosure requirements.[40] The commenters similarly suggested changes to the language of paragraph (c) of the amended rule to clarify that a dealer ''that is an introducing a dealer and whose carrying dealer has agreed to comply with section (a) of the rule is exempt from the requirements of the rule.'' [41] The commenters believe the change is minor and would allow dealers to claim the exemption created from the proposed rule change without the burden of amending their clearing agreements.[42] The commenters indicated that a failure to modify the proposed rule change as suggested would result in a substantial number of duplicative disclosures sent by introducing firms and clearing firms.[43]

In its response, the MSRB agreed with the commenters and submitted Amendment No. 1 to the proposed rule change to address the issue.[44] The MSRB Response Letter recognized that dealers may not delineate all regulatory obligations specifically undertaken by a carrying dealer within the carrying agreement and it is not the MSRB's intention to place a burden on dealers to modify such agreements to reflect the agreed upon assigning of the regulatory obligation to the carrying dealer.[45] The MSRB stated that Amendment No. 1 is meant to clarify that a carrying dealer can comply with the obligation under MSRB Rule G–10(a) on behalf of an introducing dealer without the need for it to be specifically called out within the carrying agreement.[46] Accordingly, the MSRB explained that Amendment No. 1 would modify G–10(c) in the proposed rule change to read ''any dealer [. . .] who is a party to a carrying agreement in which the carrying dealer has agreed to comply with section (a) of this rule, is exempt from the requirements of this rule'' to read ''any dealer [. . .] that agrees with a carrying dealer servicing its customer accounts that the carrying dealer will comply with section (a) of this rule, is exempt from the requirements of this rule.'' [47]

Separately, one commenter reiterated its belief that ''current Rule G–10(b), amended Rule G–10(d), should not require annual notifications by municipal advisors to their municipal advisory clients'' because ''[t]hese notifications are already made promptly after the establishment of a municipal advisory relationship in the engagement letter/agreement where other required disclosures are included as required under G42.'' [48] Further, the commenter strongly disagreed with the MSRB's assertion ''that the G–10 notifications are not commonly included in municipal advisor engagement letters'' because most of its members believed this to be a natural place for them and updated their templates to include them.[49] The commenter believes ''requiring annual notifications under Rule G–10 by municipal advisors to their clients is a manual and unnecessary process as the terms of the engagement are in force for as long as the engagement is active.'' [50] The commenter noted that there are ''no other municipal advisor disclosures that are required to be made on an annual basis'', and indicated that ''[i]f any changes in required disclosures by municipal advisors are thought necessary, then those changes should be made in Rule G–42, as this is the rule that sets forth the disclosures required by non-solicitor advisors.'' [51]

In response to the comments on municipal advisors' annual notification requirements, the MSRB reiterated its position that the proposed rule change is specific to dealers' obligations under MSRB Rule G–10, and the MSRB is not proposing to modify municipal advisors' obligations under the rule.[52] The MSRB noted that it previously stated that ''it identified an opportunity to better align the scope of the rule's application by requiring dealers only to provide the specified notifications to those customers who would best be served by the receipt of the information.'' [53] The MSRB further noted that the obligation of municipal advisors is already limited in scope in that a municipal advisor must provide the required notifications promptly after the establishment of a municipal advisory relationship and then no less than once each calendar year thereafter during the course of the municipal advisory relationship.[54] Additionally, the MSRB did not dispute that some municipal advisors may use a template that has the initial notification included within the engagement letter or that a natural place to include the notifications would be with the engagement letter or conflicts of interest disclosures.[55] However, the MSRB noted its belief that this process is consistent with the requirement to provide the notification promptly after the establishment of a municipal advisory relationship, and that it did not seek comment on, or discuss, this matter in the proposed rule filing.[56]

The MSRB also responded that the current obligation for municipal advisors with respect to providing the required notifications annually throughout the municipal advisory relationship is in furtherance of creating an awareness amongst municipal advisory clients of the SEC, MSRB and regulatory framework.[57] The MSRB said municipal advisors' obligations under the rule are consistent with the ongoing regulatory obligation of dealers to provide the required notifications once each calendar year to those customers, with the exception of SMMPs, who have effected a transaction in municipal securities or hold a municipal securities position, during the requisite period.[58] The MSRB again reiterated its previous position ''that a regulated entity [has] the flexibility to include the written

[37] *Id.*
[38] *See* SIFMA Letter at 1; BDA Letter at 1.
[39] *See* SIFMA Letter at 1; BDA Letter at 1.
[40] *See* SIFMA Letter at 2; BDA Letter at 2.
[41] *See* SIFMA Letter at 2; BDA Letter at 2.
[42] *See* SIFMA Letter at 2; BDA Letter at 2.
[43] *See* SIFMA Letter at 2; BDA Letter at 2.
[44] *See* MSRB Response Letter at 2 and 3.
[45] *Id.* at 3.
[46] *Id.*
[47] *Id.*
[48] *See* SIFMA Letter at 2.
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *See* MSRB Response Letter at 3 and 4.
[53] *Id.*
[54] *Id.* at 4.
[55] *Id.* at 4.
[56] *Id.* at 4.
[57] *See* MSRB Response Letter at 4 and 5.
[58] *Id.* at 5.

annual notifications with other materials. Those other materials may include the written disclosure of material conflicts of interest and other information required to be provided by a municipal advisor under Rule G–42(b).'' [59] The MSRB also responded that ''if a regulated entity would like to post the annual notifications on its website, in addition to sending the written annual notifications to its customers or municipal advisory clients, the regulated entity may do so as long as the information on the regulated entity's website complies with Board and any other applicable laws, rules and regulations.'' [60] The MSRB stated that ''while flexibility in the delivery mechanism is afforded,'' it continues to believe that municipal advisory clients should receive annual notifications during the course of the municipal advisory relationship.[61]

## IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, the MSRB Response Letter, and Amendment No. 1. The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the provisions of Section15B(b)(2)(C), which provides, in part, that the MSRB's rules shall:

> [B]e designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, and to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[62]

The Commission believes that the proposed rule change, as modified by Amendment No. 1, will promote just and equitable principles of trade, and protect investors and the public interest by ensuring that customers who have effected a transaction in municipal securities or hold a municipal securities position, during the requisite period, receive information that would be useful to them in understanding the regulatory framework for municipal securities. The Commission further believes that the proposed rule change may avoid confusion in the municipal market because dealers would not have to provide notifications to customers who have not effected any municipal securities transactions.

The Commission believes that MSRB Rule G–10, as amended by the proposed rule change and Amendment No. 1, would continue to be designed to prevent fraudulent and manipulative acts, because the rule, as so modified, is designed to ensure that municipal securities customers of a dealer receive beneficial information, and that all other customers will continue to have access to such information via the dealer's website.

The Commission further believes that the proposed amendments to MSRB Rule G–48, which provide an exemption for remitting notifications to SMMPs, so long as the SMMPs have access to such notifications on a dealer's website, will facilitate transactions in municipal securities and help perfect the mechanism of a free and open market in municipal securities. Specifically, the proposed amendments will provide dealers with an exemption from a regulatory burden by eliminating the need to provide a notification that appears to be unnecessary. SMMPs are, as defined, generally knowledgeable about the registration status of a dealer and how to file a complaint and can access the information on the dealer's website if needed.

In approving the proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.[63] Section 15B(b)(2)(C) of the Act [64] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The purpose of the proposed rule change is to reduce the compliance burden on dealers and ensure the greatest utility to customers receiving the notifications. Before deciding on the form of the proposed rule change, the MSRB reviewed multiple options and determined the proposed rule change was the least burdensome and most efficient.[65] As such, the Commission believes that the proposed rule change would neither impose a burden on competition nor hinder capital formation, as the proposed rule change would reduce burdens to dealers of remitting the notifications to all customers by narrowing the scope of the application of MSRB Rule G–10. The Commission also believes that the proposed rule change would improve the municipal securities market's operational efficiency by clarifying existing regulatory obligations, further promoting fair dealings between market participants. Additionally, the MSRB specifically drafted Amendment No. 1 to the proposed rule change in response to comments received to insure the proposed rule changed did not create additional burdens on dealers or affect market efficiency.

Further, the Commission does not expect the proposed rule change, as modified by Amendment No. 1, to alter the competitive landscape of the municipal securities dealer community because the amendments to MSRB Rule G–10 and MSRB Rule G–48 would be applicable to all dealers; therefore, the expected benefits and minor costs, if any, would be proportionate to the size and business activities of each dealer.

Accordingly, the Commission does not believe that the proposed rule change, as modified by Amendment No. 1, would result in any additional burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

As noted above, the Commission received two comment letters on the filing. The Commission believes that the MSRB, through its response and Amendment No. 1, addressed the commenters' concerns. For the reasons noted above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

## V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use of the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2021–04 on the subject line.

[59] *Id.* at 5. (internal quotations emitted).

[60] *Id.* at 5.

[61] *See* MSRB Response Letter at 5.

[62] 15 U.S.C. 78*o*–4(b)(2)(C).

[63] 15 U.S.C. 78c(f).

[64] 15 U.S.C. 78*o*–4(b)(2)(C).

[65] *See* Notice.

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2021–04. 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 MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2021–04 and should be submitted on or before November 2, 2021.

## VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. As noted by the MSRB, Amendment No. 1 does not raise any significant issues with respect to the proposed rule change and only provides a minor change to address an issue raised by commenters. Further, the proposed rule change, as modified by Amendment No. 1, is designed to ease burdens without negatively affecting investors or the public interest.

For the foregoing reasons, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,[66] that the proposed rule change (SR–MSRB–2021–04) be, and hereby is, approved.

For the Commission, by the Office of Municipal Securities, pursuant to delegated authority.[67]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–22075 Filed 10–8–21; 8:45 am]

**BILLING CODE 8011–01–P**

[66] 15 U.S.C. 78s(b)(2).

[67] 17 CFR 200.30–3a(a)(2).

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. CF 270–291, OMB Control No. 3235–0328]**

## Proposed Collection; 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:*
Form ID

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (the ''Paperwork Reduction Act''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and revisions.

Form ID (OMB Control No. 3235–0328) must be completed and filed with the Commission by all individuals, companies, and other organizations who seek access to file electronically on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR''). Those seeking access to file on EDGAR typically include those who are required to make certain disclosures pursuant to the federal securities laws. The information provided on Form ID is an essential part of the security of EDGAR. Form ID is not a public document because it is used solely for the purpose of screening applicants and granting access to EDGAR. Form ID must be submitted whenever an applicant seeks an EDGAR identification number (Central Index Key or CIK) and/or access codes to file on EDGAR. The Commission may consider potential technical changes to the EDGAR filer access and filer account management processes (''potential access changes'') that include the addition of individual user account credentials as well as a filer management tool on EDGAR through which filers would manage their EDGAR accounts. If the potential access changes are implemented, the Commission anticipates that it would adopt amendments to certain Commission rules and forms to reflect the potential access changes, including Form ID. The potential access changes would include a filer designating on Form ID which of its users would act as filer administrator(s) to manage the filer's EDGAR account, analogous to the contact person listed on Form ID who currently receives access codes. The potential access changes would also include additional data fields on Form ID related to authorized individuals.[1]

Separately, the Commission may consider potential amendments to Form ID that would result in a more uniform and secure process for EDGAR access by requiring applicants that already have a CIK and no longer have access to EDGAR to apply for access by submitting a new Form ID, rather than by submitting a manual passphrase update request, as they do currently.[2] As part of their Form ID application, such applicants would continue to provide additional documentation as currently required by the EDGAR Filer Manual for manual passphrase update requests.[3]

For purposes of the Paperwork Reduction Act, we currently estimate that there are 48,493 Form ID filings annually and that it takes approximately 0.15 hours per response to prepare for a total of 7,274 annual burden hours. The current burden includes the number of Form ID filings for filers without CIKs (48,089 filings) and filers with CIKs who have not filed

[1] An ''authorized individual'' for purposes of Form ID notarization process includes, for example, the Chief Executive Officer, Chief Financial Officer, partner, corporate secretary, officer, director, or treasurer of a company filer; or for individual filers, the individual filer or a person with a power of attorney from the individual filer. *See* EDGAR Filer Manual, Volume I, at Section 3.

[2] The manual passphrase update request is submitted by filers who do not possess access codes for their existing EDGAR accounts when the contact email address on their existing account is not accurate. (If the contact email address were accurate, they would be able to receive a security token to allow them to regain access without engaging in the manual passphrase update request process.)

[3] *See* EDGAR Filer Manual, Volume I, at Section 4. *See also* Adoption of Updated EDGAR Filer Manual, Release No. 33–10948 (Jun. 21, 2021) [86 FR 40308 (Jul. 28, 2021)].

electronically on EDGAR (404 filings).[4] Filers are responsible for 100% of the total burden hours.

If the potential access changes and potential Form ID amendments become effective, for purposes of the Paperwork Reduction Act, we estimate that the number of Form ID filings would increase approximately by 7,284 annually[5] and that the number of hours to prepare Form ID would increase by 0.15 hours. The current approved estimate of the annual number of Form ID filings for filers without CIKs (48,089 filings) and filers with CIKs who have not filed electronically on EDGAR (404 filings) would stay the same.

Thus, for purposes of the Paperwork Reduction Act, the estimated total number of annual Form ID filings would increase from 48,493 filings to 55,777 filings.[6] The estimate of 0.15 hours per response would increase to 0.30 hours per response. The estimated total annual burden would increase from 7,274 hours to 16,734 hours.[7] The estimate includes the number of filers without CIKs, filers with CIKs who have not filed electronically on EDGAR, and filers with CIKs who are seeking to reaccess EDGAR. The estimate that the filers are responsible for 100% of the total burden hours would stay the same.

In relation to the potential access changes described above, the Commission may consider amending Form ID to make technical modifications and clarifications. We do not believe that these technical modifications and clarifications to Form ID would make any substantive modifications to any existing collection of information requirements or impose any new substantive recordkeeping or information collection requirements within the meaning of the Paperwork Reduction Act.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on Form ID. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (i) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimate of the burden imposed by the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information collected; and (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 6, 2021.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–22136 Filed 10–8–21; 8:45 am]

**BILLING CODE 8011–01–P**

[4] 48,089 filings for users without CIKs + 404 filings for filers with CIKs who have not yet filed electronically on EDGAR = 48,493 filings.

[5] We base this estimate on the average annual number of filings from filers with CIKs who submitted manual passphrase update requests for the past three federal fiscal years. ((7,004 filings per year + 6,871 filings per year + 7,978 filings per year)/3 years) = average of 7,284 filings per year.

[6] 48,493 filings + 7,284 filings = 55,777 filings.

[7] 55,777 filings × 0.30 hours/filing = 16,734 hours (rounded up).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, October 13, 2021 at 10:00 a.m.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast only on the Commission's website at *www.sec.gov.*

**MATTERS TO BE CONSIDERED:**

1. The Commission will be to consider whether to re-open the comment period for Listing Standards for Recovery of Erroneously Awarded Compensation, Release No. 33–9862 (Jul. 1, 2015), 80 FR 41143 (Jul. 14, 2015), and issue additional requests for comment on the proposed implementation of Section 10D of the Securities Exchange Act of 1934, as added by Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

*Authority:* 5 U.S.C. 552b.

Dated: October 6, 2021.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2021–22194 Filed 10–7–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No: SSA–2021–0040]**

### Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA. Comments: *https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2021–0040].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.* Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2021–0040].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your

comments, we must receive them no later than December 13, 2021. Individuals can obtain copies of the collection instruments by writing to the above email address.

*1. Statement of Household Expenses and Contributions—20 CFR 416.1130–416.1148—0960–0456.* SSA bases eligibility for Supplemental Security Income (SSI) on the needs of the recipient. In part, we assess need through determining the amount of income a recipient receives. This income includes in-kind support and maintenance in the form of food and shelter home owners provide. SSA uses Form SSA–8011–F3, Statement of Household Expenses and Contributions, to determine whether the claimant or recipient receives in-kind support and maintenance. This is necessary to determine: (1) The claimant's or recipient's eligibility for SSI, and (2) the SSI payment amount. SSA only uses this form in cases where SSA needs the householder's (head of household) corroboration of in-kind support and maintenance. The SSA–8011–F3 provides information, which could affect SSI eligibility and payment amount. An SSA claims specialist collects the information on Form SSA–8011–F3 through telephone contact with the respondents, or through face-to-face interviews. The claims specialist records the information in our electronic SSI Claims System. When we use this procedure, we do not use a paper Form SSA–8011–F3, and we do not require a wet signature, rather we request verbal attestation. However, for those few instances when we use a paper form, we ensure the appropriate person, *i.e.,* the householder, signs the form, and then the claims specialist documents the information in the SSI Claims System; faxes the form into the appropriate electronic folder; and shreds the form. Respondents are householders of homes in which an SSI applicant or recipient resides.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Average wait time in field office or for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| SSA–8011–F3 ..... | | | | | | | |
| (Paper) ..... | 21,000 | 1 | 15 | 5,250 | * $27.07 | ** 21 | *** $341,082 |
| Interview (MCS) ..... | 398,759 | 1 | 15 | 99,690 | * 27.07 | ** 21 | *** 6,476,660 |
| Totals ..... | 419,759 | ..... | ..... | 104,940 | ..... | ..... | *** $6,817,742 |

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

** We based this figure on averaging both the average FY 2021 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on claimants of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Integrated Registration Services (IRES) System—20 CFR 401.45—0960–0626. The IRES System verifies the identity of individuals, businesses, organizations, entities, and government agencies seeking to use SSA's secured internet and telephone applications. Individuals need this verification to electronically request and exchange business data with SSA. Requestors provide SSA with the information needed to establish their identities. Once SSA verifies identity, the IRES system issues the requestor a user identification number and a password to conduct business with SSA. Respondents are employers; employees; third party submitters of wage data; business entities providing taxpayer identification information; appointed representatives; representative payees; and data exchange partners conducting business in support of SSA programs.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Average wait time for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| IRES Internet Registrations ..... | 266,210 | 1 | 5 | 22,184 | * $33.66 | ** 0 | *** $746,713 |
| IRES Internet Requestors ..... | 14,472,710 | 1 | 2 | 482,424 | * 33.66 | ** 0 | *** 16,238,392 |
| IRES CS (CSA) Registrations ..... | 15,247 | 1 | 11 | 2,795 | * 33.66 | ** 19 | *** 256,590 |
| Totals ..... | 14,754,167 | ..... | ..... | 507,403 | ..... | ..... | *** 17,241,695 |

* We based this figure on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm#00-00000*); hourly wages for Information and Record Keeping Analysts hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes434199.htm*); and average hourly wages for paralegals/legal assistants and lawyers as posted by the U.S. Bureau of Labor Statistics (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on averaging both the average FY 2021 wait times for teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

*3. Site Review Questionnaire for Volume and Fee-for-Service Payees and Beneficiary Interview Form—20 CFR 404.2035, 404.2065, 416.665, 416.701, and 416.708—0960–0633.* SSA asks organizational representative payees to complete Form SSA–637, the Site Review Questionnaire for Volume and Fee-for-Service Payees, to provide information on how they carry out their responsibilities, including how they manage beneficiary funds. SSA then obtains information from the beneficiaries these organizations represent via Form SSA–639, Beneficiary Interview Form, to corroborate the payees' statements. Due to the sensitivity of the information, the forms are always completed based on the answers respondents give during the interviews. The respondents are individuals; State and local governments; non-profit and for-profit organizations serving as representative payees; and the beneficiaries they serve.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Total annual opportunity cost (dollars) ** |
|---|---|---|---|---|---|---|
| SSA–639—Individuals | 22,000 | 1 | 10 | 3,667 | * $19.01 | ** $69,710 |
| SSA–637—Individuals | 500 | 1 | 120 | 1,000 | * 19.01 | ** 19,010 |
| SSA–637—Organizations | 4,500 | 1 | 120 | 9,000 | * 19.03 | ** 171,270 |
| Totals | 27,000 | | | 13,667 | | ** 259,990 |

* We based these figures by averaging both the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*). As well as by averaging both the average State and local governments (*https://www.bls.gov/oes/current/oes211093.htm*), and the average non-profit and for-profit organizations serving as representative payees (*https://www.bls.gov/oes/current/oes390000.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

*4. Request for Reinstatement (Title II)—20 CFR 404.1592b–404.1592f—0960–0742.* SSA allows certain previously entitled disability beneficiaries to request expedited reinstatement (EXR) of benefits under Title II of the Social Security Act when their medical condition no longer permits them to perform substantial gainful activity. SSA uses Form SSA–371, Request for Reinstatement (Title II) to obtain: (1) A signed statement from individuals requesting an EXR of their Title II disability benefits; and

(2) proof the requestors meet the EXR requirements. SSA maintains the form in the disability folder of the applicant to demonstrate the requestors' awareness of the EXR requirements, and their choice to request EXR. Respondents are applicants for EXR of Title II disability benefits.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Average wait time for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| SSA–371 | 10,000 | 1 | 2 | 333 | * $10.95 | ** 19 | *** $38,325 |

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).

** We based this figure on averaging both the average FY 2021 wait times for teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. *Important Information About Your Appeal, Waiver Rights, and Repayment Options—20 CFR 404.502–404.521—0960–0779.* When SSA overpays beneficiaries, the agency informs them of the following rights: (1) The right to reconsideration of the overpayment determination; (2) the right to request a waiver of recovery, and the automatic scheduling of a personal conference if SSA cannot approve a request for waiver; and (3) the availability of a different rate of withholding when SSA proposes the full withholding rate. SSA uses Form SSA–3105, Important Information About Your Appeal, Waiver Rights, and Repayment Options, to explain these rights to overpaid individuals and allow them to notify SSA of their decision(s) regarding these rights. The respondents are individuals who are overpaid Social Security payments.

*Type of Request:* Revision of an OMB-approved information collection.

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Average wait time in field office or for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| SSA–3105 (Paper Form) | 500,000 | 1 | 15 | 125,000 | * $10.95 | ** 21 | *** $3,285,000 |

| Modality of completion | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) | Average theoretical hourly cost amount (dollars) * | Average wait time in field office or for teleservice centers (minutes) ** | Total annual opportunity cost (dollars) *** |
|---|---|---|---|---|---|---|---|
| Debt Management System | 166,666 | 1 | 15 | 41,667 | * 10.95 | ** 21 | *** 1,095,000 |
| Totals | 666,666 | | | 166,667 | | | *** 4,380,000 |

* We based this figure on the average DI payments based on SSA's current FY 2021 data (*https://www.ssa.gov/legislation/2021FactSheet.pdf*).
** We based this figure on averaging both the average FY 2021 wait times for field offices and teleservice centers, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: October 5, 2021.

**Naomi Sipple,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2021–22079 Filed 10–8–21; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice: 11560]**

### Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: ''Inspiring Walt Disney: The Animation of French Decorative Arts'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition ''Inspiring Walt Disney: The Animation of French Decorative Arts'' at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

**Matthew R. Lussenhop,**

*Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2021–22090 Filed 10–8–21; 8:45 am]

**BILLING CODE 4710–05–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Continuation and Request for Nominations for the Trade and Environment Policy Advisory Committee

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice and request for applications.

**SUMMARY:** The Office of the United States Trade Representative (USTR) has established a new two-year charter term and is accepting applications from qualified individuals interested in serving as a member of the Trade and Environment Policy Advisory Committee (TEPAC). The TEPAC is a trade advisory committee that provides general policy advice to the U.S. Trade Representative on trade policy matters that have a significant impact on the environment.

**DATES:** USTR will accept nominations on a rolling basis for membership on the TEPAC for the two-year charter term that began on September 28, 2021, and will expire on September 28, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ethan Holmes, Director for Private Sector Engagement, *Ethan.M.Holmes@ustr.eop.gov,* or Amanda Mayhew, Office for Environment and Natural Resources, *Amanda.B.Mayhew@ustr.eop.gov* or (202) 395–9629.

**SUPPLEMENTARY INFORMATION:**

#### 1. Background

Section 135(c)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2155(c)(1)), authorizes the President to establish individual general trade policy advisory committees for industry, labor, agriculture, services, investment, defense, small business, and other interests, as appropriate, to provide general policy advice. The President delegated that authority to the U.S. Trade Representative in Executive Order 11846, section 4(d), issued on March 27, 1975. Pursuant to an executive order that renewed the TEPAC and extended Executive Order 12905 of March 25, 1994, the U.S. Trade Representative established a new two-year charter term for the TEPAC, which began on September 28, 2021, and will end on September 28, 2023.

The TEPAC is a trade advisory committee established to provide general policy advice to the U.S. Trade Representative on trade policy matters that have a significant impact on the environment. More specifically, the TEPAC provides general policy advice with respect to the effect on the environment of implementation of trade agreements; negotiating objectives and bargaining positions before entering into trade agreements; the operation of any trade agreement once entered into, and other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.

The TEPAC meets as needed, at the call either of the U.S. Trade Representative or their designee, or two-thirds of the TEPAC members, depending on various factors such as the level of activity of trade negotiations and the needs of the U.S. Trade Representative.

#### II. Membership

The TEPAC is composed of not more than 35 members, including, but not

limited to, representatives from environmental interest groups (including environmental justice), industry (including the environmental technology and environmental services industries), agriculture, academia, consumer groups, services, non-governmental organizations, and others with expertise in trade and environment matters. USTR intends for the TEPAC to be broadly representative of key sectors and groups of the economy with an interest in trade and environmental policy issues. Fostering diversity, equity, inclusion and accessibility (DEIA) is one of the top priorities.

The U.S. Trade Representative appoints TEPAC members for a term that will not exceed the duration of this charter. Members serve at the discretion of the U.S. Trade Representative. Individuals can be reappointed for any number of terms.

The U.S. Trade Representative is committed to a trade agenda that advances racial equity and supports underserved communities and will seek advice and recommendations on trade policies that eliminate social and economic structural barriers to equality and economic opportunity, and to better understand the projected impact of proposed trade policies on communities of color and underserved communities. The U.S. Trade Representative strongly encourages diverse backgrounds and perspectives and makes appointments to the TEPAC without regard to political affiliation and in accordance with equal opportunity practices that promote diversity, equity, inclusion, and accessibility. USTR strives to ensure balance in terms of sectors, demographics, and other factors relevant to USTR's needs.

TEPAC members serve without either compensation or reimbursement of expenses. Members are responsible for all expenses they incur to attend meetings or otherwise participate in TEPAC activities.

The U.S. Trade Representative appoints TEPAC members to represent their sponsoring U.S. entity's interests on trade and the environment, and thus USTR's foremost consideration for applicants is their ability to carry out the goals of section 135(c) of the Trade Act of 1974, as amended. Other criteria include the applicant's knowledge of and expertise in international trade issues as relevant to the work of the TEPAC and USTR. USTR anticipates that almost all TEPAC members will serve in a representative capacity with a limited number serving in an individual capacity as subject matter experts. These members, known as special government employees, are subject to conflict of interest rules and may have to complete a financial disclosure report.

**III. Request for Nominations**

USTR is soliciting nominations for membership on the TEPAC. To apply for membership, an applicant must meet the following eligibility criteria at the time of application and at all times during their term of service as a TEPAC member:

1. The person must be a U.S. citizen.
2. The person cannot be a full-time employee of a U.S. governmental entity.
3. If serving in an individual capacity, the person cannot be a federally registered lobbyist.
4. The person cannot be registered with the U.S. Department of Justice under the Foreign Agents Registration Act.
5. The person must be able to obtain and maintain a security clearance.
6. For representative members, who will comprise almost all of the TEPAC, the person must represent a U.S. organization whose members (or funders) have a demonstrated interest in issues relevant to trade and the environment or have personal experience or expertise in trade and the environment.
7. For eligibility purposes, a ''U.S. organization'' is an organization established under the laws of the United States, that is controlled by U.S. citizens, by another U.S. organization (or organizations), or by a U.S. entity (or entities), determined based on its board of directors (or comparable governing body), membership, and funding sources, as applicable. To qualify as a U.S. organization, more than 50 percent of the board of directors (or comparable governing body) and more than 50 percent of the membership of the organization to be represented must be U.S. citizens, U.S. organizations, or U.S. entities. Additionally, at least 50 percent of the organization's annual revenue must be attributable to nongovernmental U.S. sources.
8. For members who will serve in an individual capacity, the person must possess subject matter expertise regarding international trade and environmental issues.

In order to be considered for TEPAC membership, interested persons should submit the following to Ethan Holmes, Director for Private Sector Engagement, at *Ethan.M.Holmes@ustr.eop.gov:*

- Name, title, affiliation, and contact information of the individual requesting consideration.
- If applicable, a sponsor letter on the organization's letterhead containing a brief description of the manner in which international trade affects the organization and why USTR should consider the applicant for membership.
- The applicant's personal resume.
- An affirmative statement that the applicant and the organization they represent meet all eligibility requirements.

USTR will consider applicants who meet the eligibility criteria in accordance with equal opportunity practices that promote diversity, equity, inclusion, and accessibility, based on the following factors:

- Ability to represent the sponsoring U.S. entity's or U.S. organization's and its subsector's interests on trade and environmental matters.
- Knowledge of and experience in trade and environmental matters relevant to the work of the TEPAC and USTR.
- How they will contribute to trade policies that eliminate social and economic structural barriers to equality and economic opportunity and to understanding of the projected impact of proposed trade policies on communities of color and underserved communities.
- Ensuring that the TEPAC is balanced in terms of points of view, demographics, geography, and entity or organization size.

**Sirat Attapit,**

*Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Engagement, Office of the United States Trade Representative.*

[FR Doc. 2021–22133 Filed 10–8–21; 8:45 am]

**BILLING CODE 3390–F2–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2020–0117; Notice 1]**

### Sumitomo Rubber Industries, Ltd., and Sumitomo Rubber North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Sumitomo Rubber Industries, Ltd. and Sumitomo Rubber North America, Inc. (collectively, ''Sumitomo'') have determined that certain Sumitomo and Falken truck tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than*

*4,536 Kilograms (10,000 Pounds) and Motorcycles.* Sumitomo filed a noncompliance report dated November 12, 2020. Sumitomo subsequently petitioned NHTSA on December 4, 2020, and later amended its petition on April 8, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the receipt of Sumitomo's petition.

**DATES:** Send comments on or before November 12, 2021.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that the comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 1947778).

**SUPPLEMENTARY INFORMATION:**

## I. Overview

Sumitomo has determined that certain Sumitomo and Falken truck tires do not fully comply with the requirements of paragraph S6.1.2(a) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles* (49 CFR 571.119). Sumitomo filed a noncompliance report dated November 12, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Sumitomo subsequently petitioned NHTSA on December 4, 2020, and later amended its petition on April 8, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Sumitomo's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

## II. Tires Involved

Approximately 8,275 of the following Sumitomo and Falken truck and bus radial tires, manufactured between January 26, 2020, and June 2, 2020, are potentially involved:

- Sumitomo ST900 11R24.5 16PR
- Sumitomo ST528 11R24.5 16PR
- Sumitomo ST528 11R22.5 16PR
- Sumitomo ST710SE 11R22.5 144/142L
- Sumitomo ST710SE 285/75R24.5 144/141L
- Sumitomo ST710SE 11R24.5 146/143L
- Sumitomo ST788+SE 285/75R24.5 144/141L
- Sumitomo ST709SE 285/75R24.5 144/141L
- Sumitomo ST709SE 11R24.5 149/146L
- Sumitomo ST778+SE 11R24.5 149/146L
- Sumitomo ST788SE 285/75R24.5 147/144L
- Sumitomo ST948SE 11R24.5 149/146L
- Sumitomo ST908N 11R22.5 146/144L
- Sumitomo ST788SE 11R22.5 146/143L
- Sumitomo ST788SE 11R24.5 149/146L
- Sumitomo ST719SE 11R22.5 146/142L
- Sumitomo ST719SE 11R24.5 149/146L
- Sumitomo ST719SE 285/75R24.5 147/144L
- Sumitomo ST948SE 285/75R24.5 144/141L
- Sumitomo ST938 11R24.5 149/146L
- Falken RI130EC 11R22.5 146/143L
- Falken RI130EC 11R24.5 149/146L
- Falken GI388 11R24.5 149/146K
- Falken RI150EC 11R22.5 146/143L
- Falken RI130EC285/75R24.5 147/144L
- Falken RI151S 315/80R22.5 156/150L

## III. Noncompliance

Sumitomo explains that the noncompliance is that the subject tires may show visual evidence of bead separation near the edge of the rim flange when tested in accordance with paragraph S7.2 of FMVSS No. 119, and therefore, do not fully meet the requirements specified in paragraph S6.1.2(a) of FMVSS No. 119. Specifically, the bead separation is due to the heat-induced expansion caused by the misplacement of the joint tape and a change in the tape's composition.

## IV. Rule Requirements

Paragraph S6.1.2(a) of FMVSS No. 119 includes the requirements relevant to this petition. When tested in accordance with the procedures of S7.2, a tire shall exhibit no visual evidence of tread, sidewall, ply, cord, innerliner, or bead separation, chunking, broken cords, cracking, or open splices.

## V. Summary of Sumitomo's Petition

The following views and arguments presented in this section, ''V. Summary of Sumitomo's Petition,'' are the views and arguments provided by Sumitomo. They have not been evaluated by the Agency and do not reflect the views of the Agency. Sumitomo described the subject noncompliance and contended that the noncompliance is

inconsequential as it relates to motor vehicle safety.

In support of its petition, Sumitomo submitted the following reasoning:

*1. The Deformation in the Subject Tires Does Not Affect Structural Integrity*

a. As described in its noncompliance report, Sumitomo discovered that a population of truck and bus radial tires may be susceptible to developing a visible deformation in a single, small area of the bead near the upper edge of a rim flange. In an email to NHTSA on March 3, 2021, Sumitomo clarified that they used the term ''deformation'' to refer to the visual evidence. After cutting into the tires to inspect the issue, Sumitomo could see that the deformation was the result of a ''breakdown in the bond between components in the bead,'' so that it fell within the definition of bead separation in FMVSS No. 109 *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 kilograms (10,000 pounds) and Motorcycles.* Sumitomo states that FMVSS No. 119 does not define ''bead separation,'' but it states that ''[a]ll terms defined in the Act and the rules and standards issued under its authority are used as defined therein.'' Therefore, we looked to that term as it is defined in FMVSS No. 109. Further, Sumitomo claims, that after review the rulemaking history of FMVSS No. 119 and the definition of bead separation, Sumitomo concluded that the heat-induced expansion caused by the misplaced joint tape may technically fall within the definition of bead separation, even though it does not involve a structural weakness in the tire. Sumitomo states that its test data demonstrates that the deformation is not likely to expose an occupant of a vehicle equipped with such tires to a significantly greater risk than an occupant of a vehicle equipped with a fully compliant tire.

b. With respect to the structure of the tire, the deformation results from two factors related to the tire's joint tape: Misplacement of the joint tape and a change in the tape's composition that altered the rubber's adhesiveness. Because joint tape is not a structural component of the tire, the resulting deformation is not an indication of a structural weakness in these tires. Moreover, the deformation induced by the joint tape does not affect the integrity of the adjacent components.

c. In manufacturing tires, Sumitomo produces long strips of material that make up the innerliner. The innerliner is the inner-most component of the tire. During the tire-building process, the innerliner ends are joined together with an adhesive material (*i.e.,* joint tape). Other components are then added on top of the inner liner. After all components are added, the built tire undergoes vulcanization (applying heat and pressure for a set period) to fully adhere the components and complete the tire-forming process. The joint tape's purpose is simply to keep the ends of the innerliner together during the tire-building process until the assemblage is vulcanized.

d. Due to misplacement of the joint tape and a change in the tape's composition, the subject tires may develop a visible deformation in the bead area near the edge of the rim flange.

e. The tire's bead core (made of several layers of steel cord bundled closely together) is enveloped by a separate layer of steel cords. The deformation is the separation between the joint strip rubber and the rubber chafer (which serves as the outer layer of the tire). The deformation occurs outside the structural components of the tire (*i.e.,* it forms to the right of the filler cord).

f. The deformation forms due to a lack of adhesion between the joint tape and components in the bead area, which can increase the percentage of butyl rubber content in this area. The increased butyl rubber content makes the material more susceptible to heat expansion and, combined with the lack of adhesion in the joint tape, the small area becomes susceptible to separations. Because the joint tape terminates in the bead area, the deformation will only occur there. The steel filler cords next to this area contain the deformation and prevent it from propagating beyond the specified area. Sumitomo's testing demonstrates that this deformation does not indicate, and will not subsequently cause, a structural weakness that could lead to a tire failure or rapid air loss.

g. Sumitomo conducted a series of three tests to confirm the structural integrity of the subject tires. In one test (Test 1), SUMITOMO tested a tire returned by a Japanese customer due to the appearance of a deformation near the bead. The returned tire was a Dunlop 275/80R22.5 SP680 that the customer used for an unknown number of miles. For this test, Sumitomo inflated the tire to 100% of the JATMA-recommended inflation pressure for its maximum load (900 kPa or approximately 130 psi) and loaded the tire to 100% of its maximum load-carrying capacity (3,450 kg). Sumitomo ran the tire on a test drum at 80 km/h for 1,250 hours (approximately 100,000 km or just over 62,000 miles). The deformation near the bead did not expand (it measured 40 mm before the test and 40 mm after the test) or cause air loss, and the tire did not otherwise fail during the testing.

For the second test (Test 2), Sumitomo manufactured a test tire using intentionally misplaced joint tape composed of the same material as the tires listed in the noncompliance report. Test 2 seeks to take the tire to failure while it is underinflated (at 67% of the recommended inflation pressure) and overloaded (at 120% of the tire's maximum load-carrying capacity). As of the filing of this petition, the tire has completed three of the four test phases. In Phase One, Sumitomo ran the tire on the test drum at 50 km/h for 520 hours. In Phase Two, Sumitomo increased the speed to 60 km/h and ran the tire for 285 hours. In Phase Three, Sumitomo increased the speed to 65 km/h and ran the tire for 190 hours. The tire developed a deformation as expected. Despite being underinflated and overloaded, the tire deformation did not cause air loss or otherwise cause the tire to fail. Since submitting the initial petition, Sumitomo has completed additional testing: Phases Four and Five of Test 2, which were run at 70 km/h and 80 km/h respectively. Sumitomo stated that the results of Phases 4 and 5 were consistent with the previous phases of testing: ''No air leak or structural damage''. The full results of Test Two, Sumitomo's complete petition and all supporting documents, are available by logging onto the FDMS website at: *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice. Sumitomo contends that the test results provide further support for its position that the deformation and ''bead separation'' caused by the misplaced joint tape is not indicative of a structural weakness, and, therefore, that the noncompliance is inconsequential to motor vehicle safety.

In a third test (Test 3), Sumitomo manufactured two tires (Dunlop 295/80R22.5 SP128A) with intentionally misplaced joint tape to test the tires in three severely overloaded conditions. During the testing, the tires developed deformations, as expected, near the bead in the area where the misplaced joint tape was applied. In the most extreme condition (loaded to 300% of the tire's maximum load-carrying capacity), the tires also developed a surface crack in the area of the misplaced joint tape. But even in these unrealistically severe conditions, the tire did not develop air leaks or otherwise structurally fail.

h. In addition to these three tests, Sumitomo also manufactured four test

tires (two for each) with misplaced joint tape to conduct the endurance tests in FMVSS No. 119 and UNECE R54. In both tests, the tires developed deformations, but otherwise met the substantive performance requirements.

*2. Conclusion*

a. Sumitomo claims that its testing demonstrates that the deformations that may form due to the misplaced joint tape are not indicative of a structural weakness and will not cause air loss.

b. Sumitomo says that the tires maintain their structural integrity and air pressure and otherwise meet all of the labeling and performance requirements of FMVSS No. 119.

c. Moreover, Sumitomo is not aware of any tire failures, air loss, crashes, or injuries related to this issue.

Sumitomo concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Sumitomo no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Sumitomo notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2021–22080 Filed 10–8–21; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2021–0014; Notice 1]**

### Harbor Freight Tools, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Harbor Freight Tools (HFT) has determined that certain HaulMaster LED trailer light kits manufactured by Changzhou Nanxiashu Tool Company do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* HFT filed a noncompliance report dated February 12, 2021, and subsequently petitioned NHTSA on February 23, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of HFT's petition.

**DATES:** Send comments on or before November 12, 2021.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

**FOR FURTHER INFORMATION CONTACT:** Leroy Angeles, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–5304.

**SUPPLEMENTARY INFORMATION:**

#### I. Overview

HFT has determined that certain HaulMaster LED trailer light kits manufactured by Changzhou Nanxiashu Tool Company, do not fully comply with certain photometry requirements of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). HFT filed a noncompliance report dated February 12, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* HFT subsequently petitioned NHTSA on February 23, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of HFT's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

**II. Equipment Involved**

Approximately 10,944 HaulMaster LED trailer light kits, manufactured by Changzhou Nanxiashu Tool Company between June 18, 2017, and June 24, 2017, are potentially involved. HFT's HaulMaster LED trailer light kit consists of a pair of replacement trailer lamps to be used on trailers less than 80 inches in overall width.

**III. Noncompliance**

HFT explains that the noncompliance is that the subject trailer light kits are equipped with a turn signal and stop function which exceeds the maximum photometric intensity requirements.

**IV. Rule Requirements**

Paragraphs S7.1.2, S7.1.2.13, S7.1.2.13.1, S7.3, S7.3.13, and S7.3.13.1 of FMVSS No. 108 include the requirements relevant to this petition. Each rear turn signal lamp must be designed to conform to the photometry requirements of Table VII which specifies the various minimum and maximum photometric intensity requirements for rear turn signal lamps at specified test points, when tested according to the procedure of paragraph S14.2.1, for the number of lamp compartments or individual lamps, the type of vehicle it is installed on, and the lamp color as specified by S7.1.2.2. Each stop lamp must be designed to conform to the photometry requirements of Table IX which specifies the various minimum and maximum photometric intensity requirements for stop lamps at specified test points, when tested according to the procedure of paragraph S14.2.1, for the number of lamp compartments or individual lamps and the type of vehicle it is installed on.

**V. Summary of HFT's Petition**

The following views and arguments presented in this section, ''V. Summary of HFT's Petition,'' are the views and arguments provided by HFT. They have not been evaluated by the Agency and do not reflect the views of the Agency.

HFT describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety. In support of its petition, HFT submitted the following reasoning:

1. In late 2018, NHTSA notified HFT that the agency had commissioned Calcoast to conduct FMVSS No. 108 compliance testing. The testing was carried out on samples from a specific batch of the HaulMaster LED trailer light kit, which were all produced in calendar week 25 of 2017. Calcoast's test findings were documented in two test reports dated December 20, 2018. In this case, a total of eight tests were conducted twice on eight samples from the same production batch produced in calendar week 25 of 2017. The test reports indicate that the samples were tested for NHTSA, once in October 2018 for a stabilization value at 30 minutes with 3% change in 15 minutes, and again in December 2018 for a stabilization value at 60 minutes with 1% change in 5 minutes. A multiplier was applied to achieve t=1 minute and t=10 minute values for the stop/turn lamps. In each test case, on both testing dates, 19 designated test points passed and 5 groups passed. Harbor Freight stated that the only noncompliance occurred when the beam pattern slightly exceeded the maximum photometric intensity output required by the standard. In the December 2018 testing, 3 out of 8 units passed all elements of the testing and were found to be fully compliant.

2. HFT contends that the trailer light kits' turn signal and stop functions deviate from the requirements only by small margins at the maximum value within the beam pattern and not by a degree that is sufficient enough to be noticeable to other road users or create an increased safety risk. Specifically, in certain individual units, portions of the LEDs have candela values that were above the luminous intensity output provided for turn signal and stop functions in FMVSS No. 108. HFT argues that the deviation from the photometry requirements is slight and all but two instances fall within 25% of the required output. Thus, HFT states, the actual performance of its lamps compared to compliant lamps would not be perceptible to the human eye and, therefore, would not create an enhanced risk to safety.

3. HFT says that historically, NHTSA has granted inconsequentiality petitions when the noncompliance is imperceptible or nearly imperceptible to vehicle occupants or surrounding traffic. When the photometric intensity level is within 25% above or below the boundary limit, the difference in the light being emitted is typically not perceptible to other drivers. According to HFT, this objective metric has been applied to various types of lighting sources, including turn signal lighting.[1] Further, HFT states that NHTSA has also applied this reasoning to noncompliances with particular zones, not just individual test points, as is the case with the HaulMaster lamps.[2] In all but two of the samples described above, the deviation is within 25% of the required values.

4. HFT says there is no increased risk of glare to oncoming motorists because the photometric exceedances are minimal and in most cases, below the threshold metric of 25% so that the differences are not perceptible to other drivers.[3]

5. HFT believes that an alternative basis on which to grant the petition is the universal compliance with the photometric requirements in the test points and groups for every lamp Calcoast tested. HFT and its fabricating manufacturer previously conducted confirmatory compliance testing at various intervals before the lamps were sourced from the supplier and during production, through accredited U.S. test labs prior to import. The lamps were tested for compliance across the array of FMVSS No. 108 requirements. HFT contends that the reports demonstrate that the same HaulMaster product meets all of the FMVSS No. 108 requirements to which they were tested. HFT's testing included batches before and after this production week and did not find any test anomalies.

6. Separately, HFT says, NHTSA has recognized the inherent challenges to manufacture all lamps so that each and every test point within the lamp meets the minimum criteria. HFT argues that is the case here. When HFT commissioned Calcoast to review and confirm the performance of these lighting products, every test passed. This indicates that the LED lamps were in fact designed to comply with FMVSS No. 108 and that the results of the monitoring testing indicate an isolated number of random failures in one batch, not a systemic lapse in production processes.[4]

7. Finally, HFT has reviewed its systems and has not received any reports or complaints about the levels of brightness for these trailer lighting kits. HFT contends that the lack of reports or indications that the subject trailer lights are either too bright or too dim supports the conclusion that the condition is

[1] Huey, R., Dekker, D., & Lyons, R. (1994). *Driver perception of just-noticeable differences of automotive signal lamp intensities.* Report No. DOT HS 808 209.

[2] Grant of Petition of General Motors; 61 FR 1663, January 22, 1996.

[3] Grant of Petition of Hella, Inc., 55 FR 37601, September 21, 1990.

[4] Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; 83 FR 51766, October 12, 2018.

undetectable to road users such as drivers following a vehicle equipped with either of the lighting products.

HFT concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

HFT's complete petition and all supporting documents are available by logging onto the FDMS website at *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject equipment that HFT no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant equipment under their control after HFT notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2021–22088 Filed 10–8–21; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Actions on Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

**DATES:** Comments must be received on or before November 12, 2021.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 4, 2021.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| | | **Special Permits Data—Granted** | |
| 10915–M | Luxfer Inc | 172.203(a), 172.301(c), 173.302a(a)(1), 173.304a(a)(1), 180.205. | To modify the special permit to authorize additional Division 2.2 and 2.3 gases. |
| 10970–M | Luxfer Inc | 173.302a(a)(1), 173.304a(a), 173.304a(d) | To modify the special permit to authorize additional Division 2.2 gases, to modify the safety control measures to more accurately reflect what type of fiber is used and to waive the elastic expansion requirement. |
| 11646–M | Aegis Chemical Solutions, LLC. | 172.203(a), 172.301(c), 177.834(h) | To modify the special permit by authorizing additional hazardous materials. |
| 11725–M | Thales Alenia Space Italia SPA. | 172.101(j), 173.301(f), 173.302a(a)(1), 173.304a(a)(2). | To modify the special permit to authorize an additional explosive. |
| 12382–M | Air Transport International, Inc. | 172.101(j), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1). | To modify the special permit to authorize an increased quantity of explosives materials. |
| 13173–M | Luxfer Canada Limited | 172.101(j), 173.302a(a)(1), 180.205(g) | To modify the special permit to authorize use the manufacture, marking, sale, and use of non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders which are manifolded and permanently mounted in a protective frame for the transportation in commerce of the materials authorized by this special permit and authorize the use of a pneumatic proof pressure test for periodic requalification. |
| 14232–M | Luxfer Inc | 173.302(a), 173.304(a), 180.205 | To modify the special permit to authorize additional 2.2 and 2.3 gases. |
| 14467–M | Brenner Tank LLC | 172.203(a), 178.345–2, 178.346–2, 178.347–2, 178.348–2. | To modify the special permit to update to current DOT incorporations by reference in 49 CFR 171.7. |

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| 20418–M | Cimarron Composites, LLC | 173.302(a) | To modify the special permit to authorize an additional hazardous material. |
| 21030–N | Mistras Group, Inc | 180.205(g) | To authorize the transportation in commerce of certain gases listed in paragraph 6 in certain composite overwrapped pressure vessels (COPVs) listed in paragraph 7 when Modal Acoustic Emission (MAE) examination is used for requalification in lieu of the hydrostatic pressure testing required in § 180.205 and the relevant special permits, as described in this special permit. |
| 21139–M | KULR Technology Corporation. | 172.200, 172.700(a) | To modify the special permit to authorize the transportation of lithium batteries transported for purposes of recycling, reuse, refurbishment, repurposing, or evaluation. |
| 21180–N | Norse Flight, Inc | 172.101(j), 173.242, 173.243, 173.27 | To authorize the transportation in commerce of certain Class 3 hazardous materials by cargo-only aircraft in non-specification bulk packagings in quantities that exceed the authorized quantity limitations to remote areas of Alaska. |
| 21198–N | Porsche Cars North America, Inc. | 172.101(j) | To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. |
| 21199–M | Solvay Fluorides, LLC | 173.227(c) | To modify the special permit to remove the requirement to line the freight container with plywood. |
| 21227–N | Apollo Fusion, Inc | 173.302 | To authorize the transportation in commerce of Xenon in non-DOT specification cylinders. |
| 21233–N | Airopack B.V | 178.33b–6(a) | To authorize the manufacture, mark, sale, and use on non-DOT specification inner containers similar to the DOT 2S specification. |
| 21235–N | United States Dept of Energy. | 173.413, 173.416 | To authorize the transportation in commerce of certain Class 7 materials in alternative packaging. |
| 21244–N | Contrivance Incorporated | 172.203(a), 172.301(c), 180.211(c)(2)(i) | To authorize the repair of certain DOT 4L cylinders without requiring pressure testing. |
| 21247–N | Volkswagen AG | 172.101(j) | To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. |
| 21252–N | Honda Racing Development UK Ltd. | 173.185(a)(1) | To authorize the transportation in commerce of prototype lithium batteries by cargo-only aircraft. |
| 21253–N | Ford Motor Company | 172.101(j) | To authorize the transportation in commerce of certain lithium ion battery modules exceeding 35 kg aboard cargo-only aircraft. |
| 21255–N | Mac Trailer Manufacturing, Inc. | 172.203(a), 178.345–2, 178.346–2, 178.347–2, 178.348–2. | To authorize the manufacture, marking, sale and use of DOT 400 series cargo tanks fabricated using certain duplex stainless steels and other materials not authorized in 49 CFR 178.345–2 as materials of construction and fabricated with thickness less than specified. |
| 21267–N | Synchronous LLC | 172.101(j) | To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. |
| 21272–N | General Motors LLC | 173.220(d), 173.185(a)(1) | To authorize the transportation in commerce via motor vehicle of production batteries that have not been proven to be of a type that meets the testing requirements of the UN Manual of Test and Criteria Section 38.3. |
| 21279–N | Davey Bickford USA, Inc | 173.56(b) | To authorize the transportation in commerce of certain explosives utilizing a shipping description that has not yet been incorporated into the HMR. |
| | | **Special Permits Data—Denied** | |
| 21114–N | Federal Cartridge Company. | 172.203(a), 173.63(b)(2) | To authorize the transportation in commerce of small arms ammunition in a loose and unoriented configuration as a limited quantity. |
| 21265–N | Marine Fire Systems, LLC | 173.56, 173.56 | To authorize the transportation of samples of a pyrotechnic extinguishing agent for testing in support of a DOT SBIR research project. |
| | | **Special Permits Data—Withdrawn** | |

[FR Doc. 2021–22158 Filed 10–8–21; 8:45 am]
BILLING CODE 4909–60–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Applications for New Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before November 12, 2021.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 4, 2021.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

SPECIAL PERMITS DATA

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| 21286–N | BASF Corporation | 180.605(h)(3) | To authorize the requalification of portable tanks without requiring a designated approval agency to witness the testing. (modes 1, 2, 3). |
| 21287–N | Daikin Applied Americas Inc. | 173.307(a)(4)(iv) | To authorize the transportation in commerce of refrigerating machines, including dehumidifiers and air conditioners, and components thereof, containing 20 kg (44 pounds) or less of GHS Category 1B or ASHRAE A2L gases in the same manner as A1 gases, per 49 CFR 173.307(a)(4)(iv). (modes 1, 2). |
| 21289–N | Chemtrade Refinery Services Inc. | 173.35(e) | To authorize the transportation in commerce of IBCs containing the residue of certain hazardous materials where the closure nearest to the hazardous materials is open. |
| 21292–N | Showa Chemicals of America, Inc. | 173.304a(a) | To authorize the transportation in commerce of non-DOT specification cylinders fabricated to a foreign cylinder specification. (mode 1). |

[FR Doc. 2021–22155 Filed 10–8–21; 8:45 am]
BILLING CODE 4909–60–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Applications for Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for modification of special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before October 27, 2021.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 4, 2021.

**Donald P. Burger,**

*Chief, General Approvals and Permits Branch.*

SPECIAL PERMITS DATA

| Application No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|
| 8215–M | Olin Winchester LLC | 172.320, 172.400, 173.212, 173.56(b), 173.62(c). | To modify the special permit to authorize an additional packaging type and an additional facility. (modes 1, 2). |
| 10232–M | Illinois Tool Works Inc | 173.304(d), 173.167, 173.306(i) | To modify the special permit to remove an obsolete proper shipping name from the special permit. (modes 1, 2, 3, 4, 5). |
| 11634–M | The Avon Company | 172.301(c), 173.24a(a)(3) | To modify the special permit to authorize a new proper shipping name to replace an obsolete proper shipping name in the special permit. (mode 1). |
| 11646–M | Baker Petrolite LLC | 172.203(a), 172.301(c), 177.834(h) | To modify the special permit to authorize an additional hazardous material. (mode 1). |
| 12184–M | Weldship LLC | 173.302a(b)(2), 173.302a(b)(3), 173.302a(b)(4), 173.302a(b)(5), 180.205(c), 180.205(f), 180.205(g), 180.205(i), 180.209(a), 180.213. | To modify the special permit to clarify the packaging testing requirements. (modes 1, 2, 3, 4). |
| 14574–M | CMC Materials EC, Inc | 180.407(c), 180.407(e), 180.407(f) | To modify the special permit to authorize an additional cargo tank. (mode 1). |
| 20493–M | Tesla, Inc. | 172.101(j) | To modify the special permit to include additional cell types for use in the lithium ion battery. (mode 4). |
| 21144–M | Consolidated Nuclear Security LLC. | 173.56(b) | To modify the special permit to increase the maximum quantity per shipment to 3,025 gallons. (modes 1, 4). |
| 21167–M | KULR Technology Corporation. | 173.185(a)(1), 172.101(j), 173.185(b)(3) | To modify the special permit to authorize alternative inner packaging. (modes 1, 2, 3, 4). |
| 21193–M | KULR Technology Corporation. | 172.200, 172.300, 172.700(a), 172.400, 172.500, 172.600, 173.185(f). | To modify the special permit to authorize alternative inner packaging. (modes 1, 2). |

[FR Doc. 2021–22157 Filed 10–8–21; 8:45 am]

**BILLING CODE 4909–60–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for effective date.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

### Notice of OFAC Action

On October 6, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

### Individuals

1. DIAZ DE LEON SAUCEDA, Cesar Enrique (a.k.a. ''LOBITO''), Manzanillo, Colima, Mexico; DOB 12 Apr 1987; POB Monterrey, Nuevo Leon, Mexico; nationality Mexico; Gender Male; C.U.R.P. DISC870412HNLZCS03 (Mexico) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Foreign Narcotics Kingpin Designation Act (Kingpin Act), 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of, the CARTEL DE JALISCO NUEVA GENERACION (CJNG) [SDNTK].

2. JARQUIN JARQUIN, Aldrin Miguel (a.k.a. ''CHAPARRITO''), Manzanillo, Colima, Mexico; DOB 18 Nov 1976; POB Nezahualcoyotl, Mexico, Mexico; nationality Mexico; Gender Male; C.U.R.P. JAJA761118HMCRRL06 (Mexico) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of, CJNG [SDNTK].

3. JARQUIN JARQUIN, Jose Jesus (a.k.a. ''R32''), Manzanillo, Colima, Mexico; DOB 26 Jul 1984; POB Ixtlahuacan de los Membrillos, Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. JAJJ840726HJCRRS04 (Mexico) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of, CJNG [SDNTK].

4. ZAGAL ANTON, Fernando, Mexico; DOB 14 Oct 1982; POB Puerto Vallarta, Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. ZAAF821014HJCGNR04

(Mexico) (individual) [SDNTK]. Designated pursuant to section 805(b)(2) of the Kingpin Act, 21 U.S.C. 1904(b)(2), for materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of, CJNG [SDNTK].

Dated: October 6, 2021.

**Bradley T. Smith,**

*Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2021–22116 Filed 10–8–21; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Special Projects 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, November 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Antoinette Ross at 1–888–912–1227 or 202–317–4110.

**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 Special Projects Committee will be held Thursday, November 10, 2021, at 11:00 a.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 Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 5, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–22083 Filed 10–8–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open meeting of the Taxpayer Advocacy Panel Joint Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Joint 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, November 18, 2021.

**FOR FURTHER INFORMATION CONTACT:** Gilbert Martinez at 1–888–912–1227 or (737) 800–4060.

**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 Joint Committee will be held Thursday, November 18, 2021, at 1:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information, please contact Gilbert Martinez at 1–888–912–1227 or (737–800–4060), or write TAP Office 3651 S. IH–35, STOP 1005 AUSC, Austin, TX 78741, or post comments to the website: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: October 5, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–22087 Filed 10–8–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence 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. This meeting will still be held via teleconference.

**DATES:** The meeting will be held Wednesday, November 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

**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 Notices and Correspondence Project Committee will be held Wednesday, November 10, 2021, at 1:00 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 Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 5, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–22084 Filed 10–8–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines 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 Tuesday, November 9, 2021.

**FOR FURTHER INFORMATION CONTACT:** Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

**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 Toll-Free Phone Lines

Project Committee will be held Tuesday, November 9, 2021 at 11:00 a.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 Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 5, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–22085 Filed 10–8–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications 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. This meeting will still be held via teleconference.

**DATES:** The meeting will be held Tuesday, November 9, 2021.

**FOR FURTHER INFORMATION CONTACT:** Conchata Holloway at 1–888–912–1227 or 214–413–6550.

**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 Taxpayer Communications Project Committee will be held Tuesday, November 9, 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 Conchata Holloway. For more information please contact Conchata Holloway at 1–888–912–1227 or 214–413–6550, or write TAP Office, 1114 Commerce Street, Mail Code 1005DAL, Dallas, Texas, 75242 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: October 5, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–22086 Filed 10–8–21; 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, November 10, 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, November 10, 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: October 5, 2021.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2021–22082 Filed 10–8–21; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Proposed Collection; Comment Request; Coronavirus Economic Relief for Transportation Services

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before December 13, 2021.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by the following method:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number TREAS–DO–2021–0016 and the specific Office of Management and Budget (OMB) control numbers 1505–0273.

**FOR FURTHER INFORMATION CONTACT:** For questions related to these programs, please contact Aaron Ferguson by emailing *Aaron.Ferguson@treasury.gov,* or calling (202) 927–0363. Additionally, you can view the information collection requests at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Coronavirus Economic Relief for Transportation Services.

*OMB Control Number:* 1505–0273.

*Type of Review:* Extension of a currently approved collection.

*Description:* On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021 (the ''Act''). Division N, Title IV, Subtitle B, Section 421 of the Act provides $2 billion for the U.S. Department of the Treasury (''Treasury'') to provide grants to eligible providers of transportation services (''Recipients'') under the Coronavirus Economic Relief for Transportation Services (''CERTS'') Program. Recipients include motorcoach companies, school bus companies, passenger vessel companies, and pilotage companies. Under Section 421 of the Act, Recipients must demonstrate significant revenue losses as a result of COVID–19, and must use grant funds for payroll costs and for other eligible operating expenses.

*Forms:* Compliance Reporting Forms.

*Affected Public:* Private Sector.

*Estimated Number of Respondents:* 1,460.

*Frequency of Response:* Once, Quarterly.

*Estimated Total Number of Annual Responses:* 7,300.

*Estimated Time per Response:* 1.5 hours.

*Estimated Total Annual Burden Hours:* 10,950.

*Request for Comments:* Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

*Authority:* 44 U.S.C. 3501 *et seq.*

Dated: October 5, 2021.

**Molly Stasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2021–22081 Filed 10–8–21; 8:45 am]

**BILLING CODE 4810–AK–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs (VA).

**ACTION:** Rescindment of a System of Records.

**SUMMARY:** The U.S. Department of Veterans Affairs is terminating a system of records, ''Veterans and Beneficiaries Identification Records Location Subsystem—VA'' (BIRLS), 38VA21, that is no longer in use and/or has been consolidated with the ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records-VA'' (58VA21/22/28).

**DATES:** VA will stop maintaining the system of records on August 20, 2021. Comments on this rescindment notice must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the rescindment will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Veterans and Beneficiaries Identification Records Location Subsystem-VA'' (38VA21). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Kimberly A. Newell, Sr. Program Analyst, Office of Business Integration, U.S. Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (708) 834–3149, or email *kimberly.newell@va.gov.* Please include your complete mailing address with your request.

**SUPPLEMENTARY INFORMATION:** Authoritative data stored in BIRLS was migrated to other systems and may be referenced under ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records-VA'' (58VA21/22/28) 84 FR 4138.

### Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Neil C. Evans, M.D., Chief Officer, Connected Care, Performing the Delegable Duties of the Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on October 6, 2021 for publication.

Dated: October 6, 2021.

**Amy L. Rose,**

*Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.*

**SYSTEM NAME AND NUMBER:**

Beneficiaries Identification Records Location System (BIRLS), VASI ID #1053 (38VA21),

**HISTORY:**

The SORN was last published June 04, 2001. Citation to the last **Federal Register** notice is 66 FR 300049.

[FR Doc. 2021–22151 Filed 10–8–21; 8:45 am]

**BILLING CODE P**

# FEDERAL REGISTER

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Part II

## Department of Housing and Urban Development

Waivers and Alternative Requirements for Implementation of the HOME American Rescue Plan (HOME-ARP) Program; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–6296–N–01]**

## Waivers and Alternative Requirements for Implementation of the HOME American Rescue Plan (HOME-ARP) Program

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the waivers and alternative requirements that apply to a grantee's use of HOME Investment Partnerships Program funds made available under Section 3205 of the American Rescue Plan Act (ARP) of 2021 (''HOME-ARP''). On September 13, 2021, HUD issued a notice imposing the requirements applicable to the use of HOME-ARP funds (the ''HOME-ARP Notice''). At the same time, HUD published an Appendix to the HOME-ARP Notice describing all waivers and alternative requirements applicable to HOME-ARP funds. Consistent with HUD's responsibility under the HUD Reform Act, HUD is providing additional notice to the public and all interested parties of the HOME-ARP waivers and alternative requirements by republishing the Appendix in this notice.

**FOR FURTHER INFORMATION CONTACT:** Virginia Sardone, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development at *Virginia.Sardone@hud.gov,* or at telephone number 202–402–4606 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### I. Background

On March 11, 2021, President Biden signed the American Rescue Plan Act (ARP) of 2021 (Pub. L. 117–2) into law, which provides over $1.9 trillion in relief to address the continued impact of the COVID–19 pandemic on the economy, public health, State and local governments, individuals, and businesses. To address the need for homelessness assistance and supportive services, Congress appropriated $5 billion in ARP funds to the HOME Investment Partnerships Program (HOME) to be administered by HUD to primarily benefit qualifying individuals or families through the following activities: (1) Development and support of affordable housing; (2) tenant-based rental assistance (TBRA); (3) provision of supportive services; and (4) acquisition and development of non-congregate shelter units. The program for the use of the $5 billion in ARP funds is the HOME-American Rescue Plan or ''HOME-ARP.''

Under HOME-ARP, qualifying individuals or families are those that are (1) homeless; (2) at risk of homelessness; (3) fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking; (4) part of other populations where providing supportive services or assistance would prevent a family's homelessness or would serve those with the greatest risk of housing instability; or (5) veterans and families that include a veteran family member that meet the criteria in one of (1)–(4) above.

On April 8, 2021, in accordance with ARP, HUD allocated HOME-ARP funds to 651 grantees. The list of grantees and allocation amounts can be found at: *https://www.hud.gov/sites/dfiles/CPD/documents/HOME-ARP.pdf.* On September 13, 2021, HUD issued Community Planning and Development Notice CPD–21–10, *Requirements for the Use of Funds in the HOME-American Rescue Plan Program* (*https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-10cpdn.pdf*) (the ''HOME-ARP Notice''), which set forth the requirements for the use of HOME-ARP funds, including criteria for qualifying populations, permissible targeting and preferences, requirements for the funds allocation plan and eligible activities. At the same time, HUD published an Appendix to the HOME-ARP Notice (*https://www.hud.gov/sites/dfiles/OCHCO/documents/cpdWaiverHOMEARP.pdf*) that describes all waivers and alternative requirements applicable to the use of HOME-ARP funds.

### II. Applicable Rules, Waiver, and Alternative Requirements

Section 3205 of ARP authorizes the Secretary of HUD to waive or specify alternative requirements for any provision of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*) (''NAHA'') or regulation for the administration of funds appropriated to HOME-ARP, other than requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that the waiver or alternative requirement is necessary to expedite or facilitate the use of HOME-ARP funds. Title II of NAHA is the authorizing statute for HOME and applicable HOME regulations are at 24 CFR part 92. Consolidated plan requirements for the use of HOME funds are in Title I of NAHA with applicable regulations in 24 CFR part 91.

Pursuant to the Secretary's HOME-ARP statutory authority and regulatory waiver authority in 24 CFR 5.110, the Secretary is waiving the provisions of NAHA and HOME regulations and imposing the alternative requirements as set forth in the Appendix in this notice. The Secretary has determined that each waiver and alternative requirement described in this notice is necessary to expedite or facilitate the use of HOME-ARP funds. A participating jurisdiction may request additional waivers and alternative requirements from HUD to address specific needs related to its use of HOME-ARP funds.

Principal Deputy Assistant Secretary for Community Planning and Development, James Arthur Jemison II, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Aaron Santa Anna, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

**Aaron Santa Anna,**

*Federal Liaison for the Department of Housing and Urban Development.*

### Appendix: Waivers and Alternative Requirements

### Overall Requirements

A. *Compliance with HOME-ARP Notice.* The requirements in 24 CFR part 92, as revised by this notice, apply to HOME-ARP. All references to compliance with requirements of or in ''this part'' in 24 CFR part 92 shall mean compliance with the requirements in ''24 CFR part 92, as revised by the HOME-ARP Notice, including the Appendix to the HOME-ARP Notice published on HUD's website, unless specifically stated otherwise herein.''

B. *Substitution of ''HOME-ARP'' for ''HOME.''* All references to ''HOME'' throughout 24 CFR part 92 shall mean ''HOME-ARP'' for the use of HOME-ARP funds unless otherwise stated in the HOME-ARP Notice.

C. *Use of ''the Act'' and ''title II of NAHA.''* The definition of ''Act'' is not revised, however ''title II of NAHA'' and ''Act'' are used interchangeably throughout the Appendix in this notice and 24 CFR part 92 and mean the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*

D. *Substitution of ''nonprofit organization'' for ''community housing development organization.''* All references to ''community housing development organization'' or ''CHDO'' in 24 CFR part 92, except the definition of CHDO in 24 CFR 92.2, are

waived and revised to ''nonprofit organization.''

E. *Matching Contribution Requirements.* The requirements of 24 CFR 92.218 through 24 CFR 92.222 and any other requirements for matching contributions in 24 CFR part 92 shall not apply to HOME-ARP funds, as section 3205(c)(1) of ARP states that the underlying statutory requirement at section 220 of NAHA (42 U.S.C. 12750) does not apply to HOME-ARP funds.

F. *Set-aside for Community Housing Development Organizations (CHDOs).* The requirements of §§ 92.300, 92.301, 92.302, 92.303, 92.452, 92.504(c)(3)(x), and 92.504(c)(7) and any other requirements for amounts set-aside for CHDOs shall not apply to HOME-ARP funds as section 3205(c)(1) of ARP states that the underlying statutory requirements at section 231 of NAHA (42 U.S.C. 12771) do not apply to HOME-ARP funds. In addition, the statutory requirements in sections 232, 233, and 234 of NAHA (42 U.S.C. 12772, 12773, and 12774(a)) for the use of set-aside funds for CHDOs are waived.

G. *Expiration of right to draw funds.* The requirements of 24 CFR 92.500(d) and any other requirements for the 24-month deadline for the commitment of funds shall not apply to HOME-ARP funds as section 3205(c)(1) of ARP states that the underlying statutory requirement at section 218(g) of NAHA (42 U.S.C. 12748) does not apply to HOME-ARP funds.

H. *Homebuyer activities/Existing homeowner requirements.* All statutory requirements for homebuyer or existing homeowner activities in NAHA are waived for the use of HOME-ARP funds because homebuyer/existing homeowner assistance is not an eligible activity under HOME-ARP. Specifically, HUD waives the requirements in sections 212(a)(1), 215(b), 254 of NAHA (42 U.S.C. 12742(a)(1), 12745, 12804) for homeownership, homebuyer, and owner-occupied activities, including the development of affordable housing for homeownership and homeowner rehabilitation. Requirements in §§ 92.205, 92.206, 92.207, 92.217, 24 92.251(c)(3), 92.254, 92.255, 92.258, and 92.504(c)(3)(ii)(B) applicable to homeownership activities shall not apply and are waived.

I. *Other Support for State and Local Housing Strategies and Specified Model Program.* The statutory requirements in section 213 (42 U.S.C. 12743), sections 241 to 245 of NAHA (42 U.S.C. 12781–12785), and sections 251 to 260 (42 U.S.C. 12801–12810) do not apply to HOME-ARP and are waived.

**Waivers and Alternative Requirements**

**A. Subpart A—General**

The definitions in 24 CFR 92.2 apply to the use of HOME-ARP funds except that HUD waives 24 CFR 92.2 and imposes the following revised definitions as alternative requirements:

*Commitment* means (1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) that meets the minimum requirements for a written agreement in § 92.504(c), as revised by the Appendix in this notice, and the HOME-ARP Notice. An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (*e.g.,* an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment. An agreement between the representative unit and a member unit of general local government of a consortium does not constitute a commitment. Funds for administrative and planning costs of the HOME-ARP program are committed based on the amount in the program disbursement and information system for administration and planning. The written agreement must be:

(i) With a State recipient or a subrecipient to use a specific amount of HOME-ARP funds to produce affordable housing, acquire and develop non-congregate shelter, provide tenant-based rental assistance, or provide supportive services;

(ii) With a nonprofit organization carrying out HOME-ARP activities to provide funds for operating expenses, in accordance with the HOME-ARP Notice;

(iii) To develop the capacity of nonprofit organizations in the jurisdiction carrying out HOME-ARP activities, in accordance with the HOME-ARP Notice; or

(iv) To commit to a specific local project, as defined in paragraph (2) of this definition and the HOME-ARP Notice.

(2) *Commit to a specific local project* means:

(i) *Rental Housing.*

(A) If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or sub recipient) and project owner have executed a written legally binding agreement under which HOME-ARP assistance will be provided to the owner for an identifiable project for which all necessary financing has been secured, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within twelve months of the agreement date. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project set-up date.

(B) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is acquiring the property with HOME-ARP funds, the participating jurisdiction (or State recipient or subrecipient) and the property owner have executed a legally binding contract for sale of an identifiable property and the property title will be transferred to the participating jurisdiction (or State recipient or subrecipient) within six months of the date of the contract.

(C) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is providing HOME-ARP funds to a purchaser to acquire rental housing, the participating jurisdiction (or State recipient or subrecipient) and the purchaser have executed a written agreement under which HOME-ARP assistance will be provided for the purchase of rental housing and the property title will be transferred to the purchaser within six months of the agreement date.

(ii) *Non-Congregate Shelter.*

(A) If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or sub recipient) and project owner have executed a written legally binding agreement under which HOME-ARP assistance will be provided to the owner for an identifiable project for which development is reasonably expected to begin within 12 months of the date of commitment.

(B) If the project consists of acquisition (without rehabilitation or new construction) of a property and the participating jurisdiction (or State recipient or subrecipient) is either acquiring the property with HOME-ARP funds or providing HOME-ARP funds to a purchaser to acquire the property for use as a non-congregate shelter that is reasonably expected to operate within six months of the date the commitment, the participating jurisdiction (or State recipient or subrecipient) and the property owner or purchaser have executed a legally binding contract for sale of an identifiable property and the property title will be transferred from the property owner to the participating jurisdiction (or State recipient or subrecipient) or purchaser.

(iii) *Tenant-based rental assistance.* If the project consists of tenant-based rental assistance, the participating jurisdiction (or State recipient, or subrecipient) has entered into a rental assistance contract with the owner, the tenant, or the sponsor of the qualifying household in accordance with the provisions of the HOME-ARP Notice.

(iv) *Supportive Services.* If the project consists of providing supportive services, the participating jurisdiction (or State recipient, or subrecipient) has entered into a legally binding written agreement or contract with the contractor or subrecipient providing services to qualifying households in accordance with the HOME-ARP Notice.

*HOME-ARP funds* mean funds made available under Section 3205 of the American Rescue Plan Act of 2021 (Pub. L. 117–2) through allocations.

*Housing* includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing does not include emergency shelters, congregate or non-congregate shelters (including shelters for disaster victims), or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories).

*Program income.* Program income means gross income received by the participating jurisdiction, State recipient, or a subrecipient directly generated from the use of HOME-ARP funds. When program income is generated by housing or shelter that is only partially assisted with HOME-ARP funds, the income shall be prorated to reflect the

percentage of HOME-ARP funds used. Program income includes, but is not limited to, the following:

(1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME-ARP funds;

(2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME-ARP funds, less costs incidental to generation of the income (Program income does not include gross income from the use, rental or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, subrecipient or State recipient);

(3) Payments of principal and interest on loans made using HOME-ARP funds;

(4) Proceeds from the sale of loans made with HOME-ARP funds;

(5) Proceeds from the sale of obligations secured by loans made with HOME-ARP funds;

(6) Interest earned on program income pending its disposition;

(7) Any other interest or return on the investment of HOME-ARP funds permitted under § 92.205(b) or the HOME-ARP Notice; and,

(8) Any operating cost assistance or replacement reserve funds returned to the participating jurisdiction after the required compliance or use period, in accordance with the HOME-ARP Notice.

*Project* means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME-ARP funds as a single undertaking under 24 CFR part 92 and the HOME-ARP Notice. The project includes all the activities associated with the site and building. For HOME-ARP tenant-based rental assistance or supportive services, project means assistance to a qualifying individual or family.

*Project completion* means that all necessary title transfer requirements and construction work, if applicable, have been performed; the project complies with the requirements of the HOME-ARP Notice and applicable requirements of this part, as revised by the Appendix in this notice (including the property standards); the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of § 92.502(d), project completion occurs upon completion of construction and before occupancy. For HOME-ARP tenant-based rental assistance or supportive services, project completion means the final drawdown has been disbursed for the project.

*Subrecipient* means a public agency or nonprofit organization selected by the participating jurisdiction to receive HOME-ARP funds to administer all or some of the participating jurisdiction's HOME-ARP programs. A public agency or nonprofit organization that receives HOME-ARP funds solely as a developer or owner of a housing project or non-congregate shelter is not a subrecipient. The participating jurisdiction's selection of a subrecipient is not subject to the procurement procedures and requirements.

All other definitions in § 92.2 applicable to HOME-ARP remain unchanged.

**B. Subpart B—Allocation Formula**

1. *Formula Allocation.* ARP required the Secretary to allocate HOME-ARP funds pursuant to section 217 of NAHA (42 U.S.C. 12747) to grantees that received allocations in fiscal year (FY) 2021 pursuant to that same formula, within 30 days of enactment of ARP. Therefore, section 216(1) (42 U.S.C. 12746(1)) which requires the allocation of funds provided under title II of NAHA in 20 days from the date of enactment of the appropriation and sections 216(10) (42 U.S.C. 12746(10)) and 217(a)(4) (42 U.S.C. 12747(a)(4)) which provide for a threshold reduction do not apply. The requirements in 24 CFR 92.50 and 92.60 apply only to the extent that they do not conflict with this ARP statutory requirement. All regulatory requirements related to the participation threshold amount do not apply to HOME-ARP.

*Insular Areas*

2. *Program description.* The requirements in 24 CFR 92.61 are waived to the extent they apply to HOME-ARP funds and HUD imposes the alternative requirement that insular areas must comply with the requirements for participating jurisdictions for the HOME-ARP allocation plan in the HOME-ARP Notice, unless stated otherwise in the HOME-ARP Notice.

3. *Review of program description and certifications.* The requirements for the HOME-ARP allocation plan for participating jurisdictions in the HOME-ARP Notice apply to insular areas, therefore 24 CFR 92.62 is waived to the extent that it conflicts with the following alternative requirements:

(a) *Review of HOME-ARP allocation plan.* The responsible HUD Field Office will review an insular area's HOME-ARP allocation plan and will approve the plan unless the insular area has submitted a substantially incomplete HOME-ARP allocation plan; has submitted a HOME-ARP allocation plan that is inconsistent with the purposes of ARP; has failed to submit information sufficient to allow HUD to make the necessary determinations that the HOME-ARP allocation plan complies with the requirements in the HOME-ARP Notice; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs.

An insular area's allocation plan is inconsistent with ARP if it allocates HOME-ARP funds for uses other than a HOME-ARP eligible activity, as described in the HOME-ARP Notice. An insular area's HOME-ARP allocation plan is substantially incomplete if the insular area does not complete the required public participation or consultation or fails to describe those efforts in the plan; if the insular area fails to include the required elements outlined in the HOME-ARP Notice, including the amount of HOME-ARP funds for each eligible HOME-ARP activity type; the insular area fails to identify and describe the responsibilities of the subrecipient or contractor administering all of its HOME-ARP award, if applicable; or HUD rejects the insular area's certifications as inaccurate.

If the insular area has not submitted information in its HOME-ARP allocation plan that is satisfactory to HUD to demonstrate compliance with HOME-ARP allocation plan requirements; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the HOME-ARP allocation plan and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory plan.

(b) *Review period.* Within thirty days of receipt of the HOME-ARP allocation plan, the HUD Field Office will notify the insular area if determinations cannot be made based on the information submitted that the HOME-ARP allocation plan complies with HOME-ARP allocation plan requirements, or if the proposed projects or activities are beyond currently demonstrated capability as demonstrated by past performance in housing and community development programs. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information or to revise the proposed projects or activities in its HOME-ARP allocation plan.

(c) *HOME Investment Partnership Agreement.* Upon issuance of the HOME-ARP Notice, HUD will obligate all HOME-ARP grants to insular areas through the signing of the HOME-ARP Grant Agreements by both parties. After obligation, HUD will permit the insular area to use 5 percent of its award for eligible administrative and planning costs in accordance with the HOME-ARP Notice. After submission and acceptance of the insular area's HOME-ARP allocation plan, the remainder of the HOME-ARP funds will be made available to the insular area for expenditure.

4. *Amendments to program description.* HUD waives 24 CFR 92.63 and imposes the following alternative requirement for insular areas:

Insular areas must make a substantial amendment to its HOME-ARP allocation plan for a change in the method of distributing funds; to carry out an activity not previously described in the plan; to change the purpose, scope, location, or beneficiaries of an activity, including new preferences not previously described in the plan; a change in the guidelines that apply to HOME-ARP funds for other forms of investment (24 CFR 92.61(b)(6)), minority and women business outreach program (24 CFR 92.61(b)(7)), or refinancing (24 CFR 92.61(b)(8)); or a change

in the tenure type of the project or activities; or a funding increase to a project or activity of $100,000 or 50 percent (whichever is greater). Participating jurisdictions must make the proposed substantial amendment public and provide for a 15-day public comment period prior to submission. Upon completion, participating jurisdictions must submit substantial amendments to HUD in accordance with the process for submitting the HOME-ARP allocation plan as described in Section V.D.

The HUD Field Office will notify the insular area if its HOME-ARP allocation plan, as amended, does not permit a determination that the HOME-ARP allocation plan complies with the requirements in the HOME-ARP Notice, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to revise the proposed projects or activities in its HOME-ARP allocation plan.

5. *Applicability of HOME-ARP requirements to insular areas.* The requirements in 24 CFR 92.64 are revised to impose the alternative requirement that insular areas are subject to the same HOME-ARP requirements in the HOME-ARP Notice as participating jurisdictions, and applicable regulatory requirements for insular areas that are not revised by the HOME-ARP Notice. The following exceptions in 24 CFR 92.64, as revised, still apply to insular areas:

(1) Subpart K (Program Administration): References to HOME Investment Trust Fund in 24 CFR 92.500(b), as revised by the HOME-ARP Notice shall be ''HOME account'' for insular areas. The requirements in 24 CFR 92.502(c) *Local Account* do not apply to insular areas, and instead insular areas must comply with Treasury Circular No. 1075 (31 CFR part 205) and 2 CFR 200.305.

(2) Section 92.504 (Participating jurisdiction responsibilities; written agreements; on-site inspections) applies, except that the written agreement must require compliance with the requirements in the HOME-ARP Notice, including the Appendix.

(3) Subpart L (Performance Reviews and Sanctions). Section 92.552 does not apply. Instead, 24 CFR 92.65 applies.

Exceptions in § 92.64(a)(1), (4), and (5) do not apply to HOME-ARP for insular areas and are waived. The requirements in 24 CFR 92.64(b), (c), and (d) for insular areas are not revised.

6. *Reallocation.* Section 217 of NAHA (42 U.S.C. 12747) and the regulation at 24 CFR 92.66 for the reallocation of funds for insular areas are waived so that any HOME-ARP funds which are reduced or recaptured from an insular area's allocation will be reallocated by HUD in accordance with 24 CFR part 92, subpart J, as revised by the Appendix in this notice.

**C. Subpart C—Consortia; Designation and Revocation of Designation as a Participating Jurisdiction**

1. *Continuous designation as a participating jurisdiction.* 24 CFR 92.106 is waived and revised to the alternative requirement that once a State or unit of general local government is designated a participating jurisdiction for HOME-ARP, it must remain a HOME-ARP participating jurisdiction for its HOME-ARP period of performance and the requirements of 24 CFR 92.102 through 92.105 do not apply, unless HUD revokes the designation in accordance with 24 CFR 92.107, as revised by the Appendix in this notice. Once allocated HOME-ARP funds, a HOME-ARP participating jurisdiction does not have to be a participating jurisdiction under the HOME program to remain a participating jurisdiction under the HOME-ARP program.

2. *Revocation of designation as a participating jurisdiction.* The requirements in 24 CFR 92.107(a) apply to HOME-ARP. The requirements in § 92.107(b) and (c) are waived. Reallocation requirements in § 92.107(c) are replaced with the alternative requirements for 24 CFR part 92, subpart J, as revised by the Appendix in this notice.

**D. Subpart D—Submission Requirements**

1. *Submission requirements.* HUD waives requirements associated with a comprehensive housing affordability strategy in sections 105 (42 U.S.C. 12705), 106 (42 U.S.C. 12706), 107 (42 U.S.C. 12707), and 216 (42 U.S.C. 12746) of NAHA and 24 CFR 92.150 and imposes the following alternative requirement:

After the date of the HOME-ARP Notice, the participating jurisdiction may execute the HOME-ARP grant agreement with HUD to obligate the participating jurisdiction's HOME-ARP allocation. After obligation and prior to acceptance of a participating jurisdiction's HOME-ARP allocation plan by HUD, the participation jurisdiction may incur eligible administrative and planning costs in accordance with 24 CFR 92.207, as revised by the Appendix in this notice and may expend up to 5 percent of its HOME-ARP funds for eligible administrative and planning costs.

The participating jurisdiction must submit a HOME-ARP allocation plan and related documents in accordance with the HOME-ARP Notice, including the requirements for the content of the HOME-ARP allocation plan, the process of developing and submitting the plan, certifications, consultation, public participation, HUD review, identification of subrecipient or contractor administering all of a participating jurisdiction's HOME-ARP award and its responsibilities, if applicable, and amendments. After a participating jurisdiction's HOME-ARP allocation plan has been accepted by HUD, in accordance with the HOME-ARP Notice, a participating jurisdiction may use its HOME-ARP funds on all eligible costs, including eligible project costs.

If the participating jurisdiction does not submit a HOME-ARP allocation plan or if the participating jurisdiction's plan is not accepted within a reasonable period of time, as determined by HUD, all HOME-ARP costs incurred by the participating jurisdiction (or its subrecipient or contractor) will be ineligible costs and any HOME-ARP funds expended by the participating jurisdiction must be repaid to the HOME Investment Trust Fund Treasury account, in accordance with guidance from HUD.

**E. Subpart E—Program Requirements**

1. *Distribution of assistance.* The requirements in section 222 of NAHA (42 U.S.C. 12752) and 24 CFR 92.201 are waived to the extent necessary to impose the following alternative requirements:

*a. Local.* Each participating jurisdiction must, insofar as is feasible, distribute HOME-ARP funds geographically within its boundaries and among different categories of need of qualifying populations, according to the priorities identified in its approved HOME-ARP allocation plan. The participating jurisdiction may only invest its HOME-ARP funds in eligible projects within its boundaries, or in jointly funded projects within the boundaries of contiguous local jurisdictions which serve qualifying populations in both jurisdictions. For a HOME-ARP rental or non-congregate shelter project to be jointly funded, both jurisdictions must make a financial contribution to the project.

*b. State.* Each State participating jurisdiction is responsible for distributing HOME-ARP funds throughout the State according to the State's assessment of the geographical distribution of the needs of the qualifying populations within the State, as identified in the State's approved HOME-ARP allocation plan. The State must distribute HOME-ARP funds to rural areas in amounts that take into account the non-metropolitan share of the State's total qualifying populations and objective measures of rural need, such as poverty and homelessness data, as set forth in the State's approved HOME-ARP allocation plan. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need. A State that uses State recipients to perform program functions shall require that the State recipients use HOME-ARP funds in accordance with the HOME-ARP Notice and other applicable laws. A State may fund projects on Indian reservations located within the State provided that the State includes Indian reservations in its consolidated plan and HOME-ARP allocation plan.

*Eligible and Prohibited Activities*

2. *New Eligible Activities.* In addition to the activities contained in 24 CFR 92.205 and the NAHA, section 3205(a)(1) of ARP has defined the following new eligible activities:

(1) Supportive services to qualifying households that are not already receiving supportive services, including supportive services activities listed in section 401(29) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(29)); housing counseling; and homeless prevention services; and

(2) The acquisition and development of non-congregate shelter units.

For purposes of implementing the new eligible activities under ARP, HUD has determined that the new eligible activities are not subject to the requirements in section

212 of NAHA (42 U.S.C. 12742) and imposes the requirements for the new eligible activities in the HOME-ARP Notice. As such, the waivers and alternative requirements in this Notice shall not apply to the above-activities unless specified in the HOME-ARP Notice.

3. *Eligible activities.* HUD is providing a waiver of the requirements of section 212(a)(1) and (3) of NAHA (42 U.S.C. 12742(a)(1) and (3)), section 215(b) of NAHA (42 U.S.C. 12745(b)), 24 CFR 92.205(a)(1)–(4), (b)–(e), and 24 CFR 92.209 as follows:

*(1) Ineligible activities.* Homeownership and owner-occupied activities, including assistance to homebuyers, development of affordable housing for homeownership, and homeowner rehabilitation, shall not be eligible activities in which HOME-ARP funds may be invested.

*(2) Costs associated with eligible activities.* HUD is waiving and imposing an alternative requirement to 24 CFR 92.205(a)(1) because the regulation specifies that eligible costs are those set forth in 24 CFR 92.206 through 24 CFR 92.209. The alternative requirement is that eligible costs shall be those costs set forth in 24 CFR 92.206 through 24 CFR 92.209, as modified by the waivers and alternative requirements in this notice.

*(3) Applicability of forms of assistance, minimum amount of assistance, multi-unit projects, and related limited waivers.* As homeownership activities are not eligible activities for HOME-ARP funds, 24 CFR 92.205(b)–(d) are waived to the extent that they applied to assisting homebuyers, homeowners, or the development of housing for homeownership purposes.

*(4) Waiver and alternative requirement of regulations for terminated projects.* As participating jurisdictions are required to have a HOME-ARP Investment Trust Fund Treasury account instead of the local HOME Investment Trust Fund, HUD is providing a limited waiver and alternative requirement of the requirements of 24 CFR 92.205(e) to the extent that 24 CFR 92.252(e) specifies that funds must be paid into the participating jurisdiction's HOME Investment Trust Fund. HOME-ARP funds repaid pursuant to 24 CFR 92.252(e) and the HOME-ARP Notice shall be repaid to the participating jurisdiction's HOME-ARP Investment Trust Fund Treasury account.

4. *Eligible project costs.* HUD waives 24 CFR 92.206 to the extent that it conflicts with the eligible costs for eligible activities identified in the HOME-ARP Notice. In addition, HUD waives 24 CFR 92.206(d)(5) and imposes the following alternative requirement:

For new construction or rehabilitation of HOME-ARP rental housing for qualifying populations, the cost of funding operating cost assistance during the project's compliance period or a capitalized operating cost assistance reserve in accordance with requirements in section VI.B of the HOME-ARP Notice is an eligible cost.

For new construction or rehabilitation of HOME-ARP rental housing units for low-income households, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up for HOME-ARP units for low-income households (not to exceed 12 months), is an eligible cost. An initial operating deficit reserve may only be used to pay the share of operating expenses, scheduled payments to a replacement reserve, and debt service of the HOME-ARP rental housing units for low-income households. The initial operating deficit reserve must be included in the project's underwriting and the participating jurisdiction must review and approve the initial operating deficit reserve amount in accordance with the participating jurisdiction's standardized underwriting guidelines.

The initial operating deficit reserve must be based on a participating jurisdiction's analysis of projected operating deficits attributable to the HOME-ARP units for low-income households during the period of project rent-up (not to exceed 12 months) and remaining after expected rental revenue and operating expenses are calculated according to the projected lease-up schedule. Any HOME-ARP funds placed in an initial operating deficit reserve that remain unexpended after the period of project rent-up may be retained for reserves for replacement for HOME-ARP units if permitted by the participating jurisdiction.

HUD also waives § 92.206(d)(6) to impose the following alternative requirement: Staff and overhead costs of the participating jurisdiction are those costs directly related to carrying out the project or activity, such as work specifications preparation, loan processing inspections, and other services related to assisting tenants and occupants. Although these project delivery costs may be charged as project costs, these costs cannot be charged to or paid by qualifying households or low-income families.

5. *Eligible administrative and planning costs.* Section 3205(a)(2) of ARP provides that notwithstanding sections 212(c) and (d)(1) of NAHA (42 U.S.C. 12742(c) and (d)(1)), a participating jurisdiction or insular area may use up to fifteen percent of its HOME-ARP allocation for payment of administrative and planning costs of the HOME-ARP program. Therefore, HUD waives sections 212(c) and (d)(1) of NAHA (42 U.S.C. 12742(c) and (d)(1)) and the requirements in 24 CFR 92.207 to the extent it conflicts with the following alternative requirement:

A participating jurisdiction may incur and expend up to fifteen percent of its HOME-ARP allocation for eligible administrative and planning costs. From the obligation date of the participating jurisdiction's HOME-ARP award, as identified in the HOME-ARP Grant Agreement, until the date of HUD's acceptance of the participating jurisdiction's HOME-ARP allocation plan, a participating jurisdiction may incur and expend up to five percent of its HOME-ARP allocation for eligible administrative and planning costs, in accordance with the requirements in the HOME-ARP Notice.

HOME-ARP funds for may not be used to pay costs attributable to the regular HOME Program, including administrative and planning costs.

A participating jurisdiction may provide all or a portion of its HOME-ARP administrative and planning funds to subrecipients and contractors that are administering activities on behalf of the participating jurisdiction (*e.g.,* CoC entity, other non-Federal entity), in accordance with the requirements in the HOME-ARP Notice. However, from the obligation date of the HOME-ARP funds in the HOME-ARP Grant Agreement and prior to HUD's acceptance of the participating jurisdiction's HOME-ARP allocation plan, a subrecipient or contractor to the participating jurisdiction may only incur and expend HOME-ARP funds for eligible administrative and planning costs if the subrecipient or contractor is responsible for the participating jurisdiction's entire HOME-ARP award and has executed a HOME-ARP written agreement that complies with 24 CFR 92.504, as revised by the Appendix in this notice. A participating jurisdiction must identify subrecipient or contractor that is responsible for the use of the participating jurisdiction's entire HOME-ARP award and describe the subrecipient or contractor's responsibilities in its HOME-ARP allocation plan, in accordance with the HOME-ARP Notice.

All costs must comply with the Cost Principles contained in subpart E of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200, as amended.

If the participating jurisdiction does not submit a HOME-ARP allocation plan or if the participating jurisdiction's plan is not accepted within a reasonable period of time, as determined by HUD, all HOME-ARP costs incurred by the participating jurisdiction will be ineligible costs and any HOME-ARP funds expended by the participating jurisdiction must be repaid to the participating jurisdiction's HOME Investment Trust Fund Treasury account, in accordance with 24 CFR 92.503, as revised by the Appendix in this notice. Moreover, if the participating jurisdiction's HOME-ARP allocation plan does not identify or include a description of the responsibilities of the subrecipient or contractor that is responsible for the participating jurisdiction's entire HOME-ARP award, if applicable, the administrative and planning costs incurred or expended by the subrecipient or contractor will also be ineligible and any HOME-ARP funds expended by the participating jurisdiction or the contractor or subrecipient must be repaid to the participating jurisdiction's HOME Investment Trust Fund Treasury account.

*Reasonable administrative and planning costs for the HOME-ARP program include:*

a. *General management, oversight, and coordination.* Reasonable costs of overall HOME-ARP program management, coordination, monitoring, and evaluation. Such HOME-ARP costs include, but are not limited to, necessary expenditures for the following:

1. Salaries, wages, and related costs of the participating jurisdiction's staff. If a participating jurisdiction charges costs to this category, the participating jurisdiction may either include the entire salary and related costs allocable to the HOME-ARP program of each person whose primary responsibilities with regard to the HOME-ARP program involves program administration

assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes any HOME-ARP program administrative assignments. A participating jurisdiction may only use one of these two methods. HOME-ARP program administration includes:

i. Developing systems and schedules for complying with HOME-ARP program requirements, including systems to prevent a duplication of benefits among beneficiaries of HOME-ARP activities;

ii. Developing interagency agreements and agreements with entities receiving HOME-ARP funds;

iii. Monitoring HOME-ARP activities for progress and compliance with HOME-ARP program requirements;

iv. Preparing HOME-ARP reports and other documents related to the HOME-ARP program for submission to HUD;

v. Coordinating the resolution of audit and monitoring findings on any HOME-ARP activities;

vi. Evaluating HOME-ARP program results against stated objectives in the HOME-ARP allocation plan, and

vii. Managing or supervising persons whose primary responsibilities with regard to the HOME-ARP program include such assignments as those described above.

2. Travel costs incurred for official business in carrying out the HOME-ARP program.

3. HOME-ARP administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services.

4. Other costs for goods and services required for administering the HOME-ARP program, such as: Rental or purchase of equipment, insurance, information systems necessary to track and implement beneficiaries of HOME-ARP activities in accordance with the requirements of the HOME-ARP Notice, including the Appendix in this notice, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

5. Costs of administering HOME-ARP TBRA and HOME-ARP supportive services programs.

b. *Staff and overhead.* Staff and overhead costs of the participating jurisdiction related to administering a HOME-ARP project or activity, such as work specifications preparation, loan processing, inspections, lead-based paint evaluations (visual assessments, inspections, and risk assessments) and other services related to assisting potential owners, tenants; and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs, at the discretion of the participating jurisdiction; however, these costs (except housing counseling) cannot be charged to or paid by qualifying or low-income individuals and families.

c. *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HOME-ARP funds.

d. *Fair Housing.* Activities to affirmatively further fair housing (AFFH) in accordance with 24 CFR 5.151 and the participating jurisdiction's certification in accordance with 24 CFR 5.152. (HUD's Interim Final Rule entitled, ''Restoring Affirmatively Furthering Fair Housing Definitions and Certifications,'' (86 FR 30779, issued on Jun. 10, 2021) as amended, established the AFFH definition at 24 CFR 5.151 and the certification requirements in 24 CFR 5.152 and became effective on July 31, 2021). Available at *https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications.*

e. *Indirect costs.* Indirect costs may be charged to the HOME-ARP program under a cost allocation plan prepared in accordance with 2 CFR part 200, subpart E, as amended.

f. *Preparation of HOME-ARP allocation plan.* Preparation of the HOME-ARP allocation plan as required in the HOME-ARP Notice. Preparation includes the costs of public hearing, consultations, and publications.

g. *Other Federal requirements.* Costs of complying with the applicable Federal requirements in 24 CFR part 92, subpart H. HOME-ARP project-specific environmental review costs may be charged as administrative or project costs in accordance with 24 CFR 92.206(d)(8) and is at the discretion of the participating jurisdiction.

6. *Eligible community housing development organization (CHDO) operating expense and capacity building costs.* Section 3205(a)(3) of ARP provides that notwithstanding sections 212(a) and (g) of the Act (42 U.S.C. 12742(a) and (g)), a participating jurisdiction or insular area may use up to an additional five percent of its allocation for the payment of operating expenses of community housing development organizations and nonprofit organizations carrying out activities under the HOME-ARP Notice, but only if such funds are used to develop the capacity of the community housing development organization or nonprofit organization in the jurisdiction or insular area to carry out activities authorized under the HOME-ARP Notice; and the community housing development organization or nonprofit organization complies with the limitation on assistance in section 234(b) of NAHA (42 U.S.C. 12774(b)). Therefore, HUD waives sections 212(a) and (g) of the Act (42 U.S.C. 12742(a) and (g)) and 24 CFR 92.208 to the extent they conflict with ARP and the requirements in the HOME-ARP Notice for Nonprofit Operating and Capacity Building Assistance and imposes the following alternative requirements:

A participating jurisdiction may use up to 5 percent of its HOME-ARP allocation to pay operating expenses of community housing development organizations and other nonprofit organizations that will carry out activities with HOME-ARP funds. A participating jurisdiction may also use up to an additional 5 percent of its allocation to pay eligible costs related to developing the capacity of eligible nonprofit organizations to successfully carry out HOME-ARP eligible activities. Participating jurisdictions may award operating expense assistance or capacity building assistance to a nonprofit organization if it reasonably expects to provide HOME-ARP funds to the organization for the eligible HOME-ARP activities of development and support of rental housing, tenant-based rental assistance, acquisition and development of non-congregate shelter, or supportive services within 24 months of the award.

*(1) Operating Expense Assistance:* Operating expenses are defined as reasonable and necessary costs of operating the nonprofit organization. These costs include employee salaries, wages and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment, materials, and supplies. HOME-ARP funds used for operating expenses must be used for the general operating costs of the nonprofit organization. These operating costs must not have a particular final cost objective, such as a project or activity, or must not be directly assignable to a HOME-ARP activity or project.

*(2) Capacity Building Assistance:* Capacity building expenses are defined as reasonable and necessary general operating costs that will result in expansion or improvement of an organization's ability to successfully carry out eligible HOME-ARP activities. Eligible costs include salaries for new hires including wages and other employee compensation and benefits; costs related to employee training or other staff development that enhances an employee's skill set and expertise; equipment (*e.g.,* computer software or programs that improve organizational processes), upgrades to materials, and supplies; and contracts for technical assistance or for consultants with expertise related to the HOME-ARP qualifying populations.

(3) Ineligible Costs:

(a) No costs related to operating a non-congregate shelter (*e.g.,* allocable overhead and staffing costs, insurance, utilities, etc.) are eligible costs under the HOME-ARP program.

(b) The actual costs of implementing a specific activity or project, including staff costs of the community housing development organization or nonprofit organization to deliver supportive services or administer HOME-ARP tenant-based rental assistance, are considered HOME-ARP project delivery costs or project soft costs and are not eligible operating expense and capacity building costs.

*(4) Limitations on Assistance:* In any fiscal year, operating assistance provided to a nonprofit organization may not exceed the greater of 50 percent of the general operating expenses of the organization, as described in the HOME-ARP Notice, for that fiscal year or $50,000. Likewise, in any fiscal year, capacity building assistance provided to a nonprofit organization may not exceed the greater of 50 percent of the general operating expenses of the organization, as described in

the HOME-ARP Notice for that fiscal year or $50,000. If an organization receives both operating assistance and capacity building assistance in any fiscal year, the aggregate total amount of assistance it may receive is the greater of 50 percent of the organization's total operating expenses for that fiscal year or $75,000.

7. *Troubled HOME-assisted rental housing projects.* HUD waives 24 CFR 92.210.

8. *Pre-award costs.* The requirements in 24 CFR 92.212 are waived and HUD imposes the alternative requirement that HOME-ARP funds cannot be used for pre-award costs.

9. *HOME Funds and Public Housing.* HUD is waiving 24 CFR 92.213(d) to the extent that it requires that HOME funds must be used in accordance with 24 CFR part 92 and the rent requirements in 24 CFR 92.252. Instead, as an alternative requirement, HOME funds must be used in accordance with 24 CFR part 92, as revised by the Appendix in this notice and the HOME-ARP Notice, including the rent requirements contained in each.

10. *HOME prohibited activities and fees.* HUD is waiving provisions in 24 CFR 92.214 and providing alternative requirements related to prohibited activities and fees, as follows:

*(1) Operating Cost Assistance.* 24 CFR 92.214(a)(6) is waived, and 24 CFR 92.214(a)(1) is waived to the extent that it conflicts with the following alternative requirements:

a. A participating jurisdiction may pay ongoing operating assistance or capitalize an operating cost assistance reserve for HOME-ARP-assisted units restricted for occupancy by qualifying populations in a project where the participating jurisdiction determines in its underwriting that the reserve is necessary to maintain the HOME-ARP units' long-term operational feasibility. However, HOME-ARP funds cannot be used for both a capitalized operating cost assistance reserve and ongoing payments for operating cost assistance during the minimum compliance period. The allowable amount of the reserve shall not exceed the amount determined by the participating jurisdiction to be necessary to provide operating cost assistance for HOME-ARP units restricted for occupancy by qualifying populations for the 15-year HOME-ARP minimum compliance period.

b. The operating cost assistance reserve for HOME-ARP units for qualifying households must be held by the project owner in a separate interest-bearing account and sized, based on an analysis of projected deficits remaining after the expected payments toward rent by qualifying households are applied to the units' share of operating costs. Funds in a capitalized operating cost assistance reserve can only be drawn to address operating deficits associated with HOME-ARP units restricted for occupancy by the qualifying populations. The participating jurisdiction must, no less than annually, review the operating cost assistance reserve account to determine that the account is appropriately sized based on the projected operating deficits of units restricted for occupancy by qualifying households. A participating jurisdiction must use the definition of operating costs in the HOME-ARP Notice in its calculation of operating deficits to determine the amount of HOME-ARP funds needed for an operating cost assistance reserve or when providing operating cost assistance. The participating jurisdiction may require the project owner to enter into a deposit account control agreement for the operating cost assistance reserve where the participating jurisdiction must approve disbursements from the account.

c. The participating jurisdiction must require the project owner to request written approval from the participating jurisdiction prior to disbursing funds from the project operating cost assistance reserve. The participating jurisdiction must review each requested distribution from the operating cost assistance reserve, including supporting documentation, to determine that the distribution is reasonable and necessary to cover the operating deficit associated with units occupied by qualifying households.

d. A participating jurisdiction may provide operating cost assistance to a HOME-ARP rental project to cover an operating deficit associated with HOME-ARP units restricted for occupancy by qualifying households except for when an operating cost assistance reserve is already established for the project. Operating cost assistance reserve and operating cost assistance cannot be provided beyond the HOME-ARP budget period, as described in Section VIII.C.3 of the HOME-ARP Notice. Unexpended operating cost assistance reserve amounts remaining at the end of the minimum compliance period of the HOME-ARP units must be returned in accordance with Section VI.B.23 of the HOME-ARP Notice. During the HOME-ARP minimum compliance period and prior to the end of the HOME-ARP budget period, a participating jurisdiction may invest additional HOME-ARP funds to provide operating cost assistance but is prohibited from investing additional HOME-ARP funds for capital costs except within the 12 months after project completion.

*(2) Eligible Costs for Operating Cost Assistance.* 24 CFR 92.206 and 24 CFR 92.214(a)(9) are waived to the extent that they conflict with the following alternative requirement:

a. For purposes of the operating cost assistance, operating costs include costs for administrative expenses, property management fees, insurance, utilities, property taxes, and maintenance of a unit that is designated as a HOME-ARP-assisted unit and required to be occupied by a qualifying household. Operating costs must be reasonable and appropriate for the area, size, population(s) served, and type of project.

b. Project administrative expenses include payroll costs, which are gross salaries and wages paid to employees assigned to the property, including payroll taxes, employee compensation, and employee benefits; employee education, training, and travel; advertising; and general administrative costs which are costs for goods and services required for administration of the housing, including rental or purchase of equipment, supplies, legal charges, bank charges, utilities, telephone/internet services, insurance, and other administrative costs that are reasonable and customary for the general administration of a rental unit occupied by qualifying populations. HOME-ARP permits the pro-rated staffing costs of a Resident Services Coordinator to be included in the operating costs allocated to a HOME-ARP unit for low-income or qualifying households if such costs are not already paid by another source. Typically, the role of a Resident Services Coordinator is to arrange community activities for residents and link residents to outside service agencies as needed.

c. Property management fee includes the total fee paid to a management agent by the owner for the day-to-day management of a HOME-ARP rental unit restricted for occupancy by qualifying populations. A management agent must cover its costs of supervising and overseeing operations of a HOME-ARP unit out of the fee they receive.

d. A reserve for replacement must be based on the useful life of each major system and expected replacement cost in a HOME-ARP project. Scheduled payments to a reserve for replacement of major systems included in the operating costs allocated to a HOME-ARP unit restricted for a qualifying household may be made from the operating cost assistance reserve. A reserve for replacement allocated to the HOME-ARP units may also be capitalized in the initial year of the minimum compliance period of the HOME-ARP units. HOME-ARP funds cannot be used to both capitalize a reserve for replacement and provide payments to the reserve for replacement from a capitalized operating reserve during the minimum compliance period.

Supportive services costs are not eligible operating costs of HOME-ARP units, however, qualifying households occupying HOME-ARP rental units may receive supportive services through the HOME-ARP supportive services eligible activity.

*(3) Prohibited fees.* 24 CFR 92.214(b) is waived only to the extent that it conflicts with the alternative requirement that a participating jurisdiction may allow such occupancy fees or charges that are customary and reasonable if such fees or charges comply with 24 CFR 578.77(b).

11. *Alternative requirements for Tenant-based rental assistance.* The requirements of section 212(a)(3) (42 U.S.C. 12742(a)(3)), 24 CFR 92.209, 24 CFR 92.252(d), and 24 CFR 92.504(c)(5) are waived. The following alternative requirements apply:

*(1) General Requirements.* HOME-ARP funds may be used to provide tenant-based rental assistance to qualifying households (''HOME-ARP TBRA''). HOME-ARP TBRA is a form of rental assistance that is attached to the household and not a particular rental unit. Therefore, the HOME-ARP TBRA assisted household may choose to move to another unit with continued HOME-ARP TBRA as long as it continues to meet the program eligibility requirements. If a HOME-ARP TBRA assisted household chooses to move, the rental assistance contract terminates and a new rental assistance contract for the new unit will be executed according to HOME-ARP TBRA requirements. The HOME-ARP TBRA assisted household must notify the

participating jurisdiction before moving in order to receive continued HOME-ARP TBRA.

*a. Tenant Selection.* Only individuals and families in the qualifying populations are eligible to receive HOME-ARP TBRA assistance. Consistent with the alternative requirements listed below and Section IV.C of the HOME-ARP Notice, a participating jurisdiction may use a Continuum of Care's (CoC's) coordinated entry (CE) process, a CE process and other referral agencies, or a waitlist to select qualifying households for HOME-ARP TBRA. Participating jurisdictions may establish a system of preferences that includes a preference for one or more of the qualifying populations, such as homeless. Preferences for one or more of the qualifying populations must be disclosed in the HOME-ARP allocation plan, as required by the HOME-ARP Notice, including the Appendix in this notice. The participating jurisdiction must select qualifying households for HOME-ARP TBRA in accordance with written tenant selection policies and criteria that are based on local housing needs established in the HOME-ARP allocation plan. The participating jurisdiction must follow written tenant selection policies and criteria that:

i. Limit eligibility to households that meet one of the HOME-ARP qualifying populations definitions in accordance with HOME-ARP requirements. Preferences for households in one or more of the HOME-ARP qualifying populations, if any, must comply with the preferences and/or method of prioritization in the participating jurisdiction's HOME-ARP allocation plan and the participating jurisdiction's policies and procedures, if any, and must not violate nondiscrimination requirements in 24 CFR 92.350.

ii. If the participating jurisdiction selects TBRA applicants off a waiting list, it must provide for the selection of households from a written waiting list in the chronological order of their application, insofar as is practicable.

iii. Give prompt written notification to any rejected applicant of the grounds for any rejection, and

iv. Comply with the VAWA requirements as described in 24 CFR 92.359.

v. Finally, the participating jurisdiction may offer, in conjunction with HOME-ARP TBRA assistance, a simultaneous award of services in accordance with Section VI.D of the HOME-ARP Notice, as well as provide particular types of other nonmandatory services that may be most appropriate for persons with a special need or a particular disability.

*(2) Tenant Protections.* Participating jurisdictions must verify that there is an executed lease between the qualifying household that receives HOME-ARP TBRA and the owner of the rental unit or a between a qualifying household that receives HOME-ARP TBRA and a HOME-ARP sponsor with a sublease between the qualifying households and the HOME-ARP sponsor, in accordance with 24 CFR 92.253(a). A HOME-ARP sponsor is a nonprofit organization that provides housing or supportive services to qualifying households and facilitate the leasing of a HOME-ARP rental unit to a qualifying household or the use and maintenance of HOME-ARP tenant-based rental assistance by a qualifying household. Participating jurisdictions may permit a HOME-ARP sponsor, as defined in Section VI.B.18 of the Notice, to execute a lease or master lease with a project owner. The HOME-ARP sponsor must then sublease a unit to a qualifying household. The lease between the qualifying household and the rental unit owner or the sublease between the HOME-ARP sponsor' and the qualifying household cannot contain any of the prohibited lease terms specified in 24 CFR 92.253(b).

*(3) Eligible Costs.* Eligible costs under HOME-ARP TBRA include rental assistance, security deposit payments, and utility deposit assistance to qualifying households. HOME-ARP funds may be used to pay for up to 100 percent of these eligible costs. A participating jurisdiction may use HOME-ARP TBRA funds to provide loans or grants to qualifying households for security deposits for rental units regardless of whether the participating jurisdiction provides any other HOME-ARP TBRA assistance. The amount of funds that may be provided for a security deposit may not exceed the equivalent of two months' rent for the unit. Utility deposit assistance is an eligible cost only if rental assistance or a security deposit payment is provided with HOME-ARP TBRA. Costs of inspecting the housing are also eligible as costs of HOME-ARP TBRA. Administration of HOME-ARP TBRA is eligible only under general management oversight and coordination at 24 CFR 92.207(a), except that the costs of inspecting the housing and determining the income eligibility of the family are eligible project costs under HOME tenant-based rental assistance.

*(4) Ineligible Costs.* HOME-ARP TBRA may not be used to pay for the homebuyer program as defined at 24 CFR 92.209(c)(2)(iv).

*(5) Portability of Assistance.* A participating jurisdiction may require the HOME-ARP TBRA assisted household to use HOME-ARP TBRA within the participating jurisdiction's boundaries or may permit the household to use the assistance outside its boundaries consistent with the requirements in 24 CFR 92.209(d).

*(6) Term of Rental Assistance Contract.* The participating jurisdiction must determine the maximum term of the rental assistance contract. The rental assistance contract continues until the end of the rental assistance contract term, as determined by the participating jurisdiction, or until the lease or sublease is terminated, whichever occurs first. The term of the rental assistance contract may be renewed, subject to the availability of HOME-ARP funds. The term of the rental assistance contract must begin on the first day of the term of the lease or sublease.

*(7) Maximum Subsidy.* The participating jurisdiction must establish policies for the allowable maximum subsidy, which may differ from the maximum subsidy requirements at 24 CFR 92.209(h). Participating jurisdictions may provide up to 100 percent subsidy for rent, security deposit payments, and utility bills. The participating jurisdiction must also establish policies for determining any household contribution to rent based on a determination of the qualifying household's income.

*(8) Rent Standard.* Consistent with 24 CFR 92.209(h)(3), participating jurisdictions must also establish a rent standard for HOME-ARP TBRA by unit size that is based upon local market conditions or the Section 8 Housing Choice Voucher program under 24 CFR part 982. The participating jurisdiction must determine whether the rent for a HOME-ARP TBRA household complies with the rent standard established by the participating jurisdiction for the HOME-ARP program and must disapprove a lease if the rent does not meet the participating jurisdiction's rent standard for HOME-ARP TBRA.

(9) *Housing Quality Standards.* Housing occupied by a household receiving HOME-ARP TBRA must comply with all housing quality standards required in 24 CFR 982.401 (or successor inspection standards issued by HUD) unless the tenant is residing in a HOME or HOME-ARP unit, in which case the participating jurisdiction may defer to initial and ongoing inspection standards.

*(10) Program Operation.* The participating jurisdiction may operate HOME-ARP TBRA itself or may contract with a PHA or other entity with the capacity to operate a rental assistance program. In either case, the participating jurisdiction or entity operating the program must approve the lease. HOME-ARP TBRA may be provided through an assistance contract with (1) an owner that leases a unit to a qualifying household; (2) the qualifying household; or (3) an owner and the qualifying household in a tri-party contract. In the case of HOME-ARP TBRA provided in coordination with a HOME-ARP sponsor, as described below, the participating jurisdiction may require that payments are made directly to the HOME-ARP sponsor that will make rental payments to the owner on behalf of the qualifying household or require payments directly to the owner of the unit.

*(11) HOME-ARP TBRA with a HOME-ARP Sponsor.* HOME ARP–TBRA may be provided in coordination with a HOME-ARP TBRA sponsor. A HOME-ARP TBRA sponsor is a nonprofit organization that provides housing or services to HOME-ARP TBRA qualifying households and facilitates the leasing of a HOME-ARP rental unit to a qualifying household or the use and maintenance of HOME-ARP TBRA on behalf of a qualifying household. A HOME-ARP sponsor may make rental subsidy payments and a security deposit payment on behalf of a qualifying household. Under HOME-ARP TBRA, a qualifying household may reside in housing leased by a HOME-ARP sponsor if there is a sublease that complies with HOME-ARP lease requirements between the HOME-ARP sponsor and the qualifying household.

*(12) Rental Assistance Contract.* There must be a rental assistance contract between the participating jurisdiction and at least one of the following:

i. HOME-ARP sponsor;

ii. Qualifying household; or

iii. Owner of the housing.

Rental subsidy payments are made on behalf of the HOME ARP–TBRA household

pursuant to a rental assistance contract. The rental assistance contract continues until the lease is terminated. Regardless of the role of the sponsor, the household has the right to continued HOME ARP TBRA assistance if it chooses to move from the unit.

The HOME-ARP sponsor may only receive the TBRA subsidy directly from the participating jurisdiction on behalf of the qualifying household if the rental assistance contract is between the HOME-ARP sponsor and the participating jurisdiction or the HOME-ARP sponsor and the participating jurisdiction have entered into a written agreement as outlined below. The HOME-ARP sponsor must make rental subsidy payments to the owner on behalf of the qualifying household per the terms and conditions of the HOME-ARP TBRA contract or written agreement with the participating jurisdiction. When the HOME-ARP TBRA qualifying household moves to a new rental unit, the HOME-ARP sponsor is not required to continue its sponsor relationship with the HOME-ARP TBRA-assisted household for the new rental unit but may do so with the consent of the HOME-ARP TBRA household.

The participating jurisdiction must establish policies and procedures regarding termination of HOME-ARP TBRA assistance for qualifying households who are absent from the rental unit where a HOME-ARP sponsor is leasing the rental unit and subleasing to the qualifying household or providing HOME-ARP TBRA rental subsidy payments on behalf of the household.

*(13) Lease and Sublease.* Participating jurisdictions must verify that each household that receives HOME-ARP TBRA assistance has an executed lease that complies with the tenant protection requirements of the HOME-ARP Notice. The lease agreement may be between the project owner and the HOME-ARP TBRA household, or participating jurisdictions may permit a HOME-ARP sponsor to execute a lease for an individual unit or a master lease with an owner for more than one unit restricted for occupancy by HOME-ARP TBRA households. If the lease agreement is between the HOME-ARP sponsor and owner, the HOME-ARP sponsor must execute a sublease agreement with a HOME-ARP TBRA household. The sublease between the HOME-ARP sponsor and the HOME-ARP TBRA household must meet the tenant protection requirements of the HOME-ARP Notice.

*(14) Written Agreement with HOME-ARP Sponsor.* The participating jurisdiction must enter into a written agreement with the HOME-ARP sponsor if the HOME-ARP TBRA rental assistance contract is not with the HOME-ARP sponsor and the HOME-ARP sponsor will receive the HOME-ARP TBRA subsidy directly from the participating jurisdiction on behalf of the qualifying household. The written agreement must specify the requirements for the HOME-ARP sponsor receiving the HOME-ARP TBRA subsidy on behalf of the qualifying household and the HOME-ARP sponsor's obligation to provide the HOME-ARP TBRA payment to the owner for the unit's required rent.

*Income Targeting*

12. *Alternative requirement to HOME rental income targeting requirements.* HUD is waiving section 215(a)(1)(B) and (C) of NAHA (42 U.S.C. 12745(a)(1)(B) and (C)) and 24 CFR 92.216. For HOME-ARP rental units, the following alternative requirements shall apply:

*(1) 30 Percent Requirement.* Not more than 30 percent of the total number of rental units assisted with HOME-ARP funds by the participating jurisdiction may be restricted to households that are low-income as defined in 24 CFR 92.2. These units may only be located in projects containing HOME-ARP units restricted for occupancy by qualifying households. The remainder of the total HOME-ARP rental units assisted with HOME-ARP funds by the participating jurisdiction must be restricted for occupancy by qualifying households in accordance with the HOME-ARP Notice.

(2) *Low-Income Households.* The HOME-ARP rental units occupied by low-income households must be occupied by low-income households and bear a rent no greater than the lesser of:

a. The Fair Market Rent for existing housing for comparable units in the area, as established by HUD, or

b. A rent equal to 30 percent of the income of a family at 65 percent of median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit.

13. *HOME tenant-based rental assistance income targeting requirements.* HUD is waiving section 212(a)(3)(A)(ii) of NAHA (42 U.S.C. 12742(a)(3)(A)(ii)) and 24 CFR 92.216 requirements for income targeting of HOME tenant-based rental assistance and imposing an alternative requirement that all persons assisted with HOME-ARP TBRA must be qualifying households upon admission.

**F. Subpart F—Project Requirements**

1. *Maximum per-unit subsidy amount and the waiver and alternative requirement for underwriting and subsidy layering.* The requirements of 24 CFR 92.250(a) shall not apply to HOME-ARP funds because section 3205 (c)(1) of ARP states that the underlying statutory requirements for cost limits in section 212(e) of NAHA (42 U.S.C. 12742(e)) do not apply to HOME-ARP funds. Additionally, the underwriting and subsidy layering requirements in 24 CFR 92.250(b) shall not apply to HOME-ARP rental project activities and are waived. Lastly, the requirements of section 212 of NAHA (42 U.S.C. 12742) and 24 CFR 92.214(a) are waived to the extent that they conflict with the alternative requirements below. HUD is specifying the following alternative requirements:

*(1) Underwriting and Subsidy Layering Guidelines.* Participating jurisdictions must develop standardized underwriting guidelines for HOME-ARP rental projects. These guidelines must provide for underwriting that accommodates and is appropriate for different types of projects. All participating jurisdictions are required to develop and implement standardized underwriting guidelines for HOME-ARP that require the following:

a. An examination of the sources and uses of funds for the project and a determination that costs are reasonable. In examining a project's proposed sources and uses, a participating jurisdiction must determine the amount of HOME-ARP development subsidy required to fill the gap between other committed funding sources and the cost to develop the project.

b. An assessment of the current market demand for the proposed project. For HOME-ARP units for qualifying households, a market assessment is not required. Rather, the participating jurisdiction can demonstrate that there is unmet need among qualifying populations for the type of housing proposed through CoC data, public housing and affordable housing waiting lists, point-in-time surveys, housing inventory count, or other relevant data on the need for permanent housing for the qualifying populations. For projects containing units restricted for occupancy by low-income households or market-rate households, the participating jurisdiction must conduct a market assessment in accordance with 24 CFR 92.250(b)(2). A third-party market assessment completed by the developer or another funder meets this requirement, but the participating jurisdiction must review the assessment and acknowledge in writing that it accepts the assessment's findings and conclusions. The market assessment and the participating jurisdiction's written acknowledgement must be retained for recordkeeping purposes.

c. Review of and determination that the developer's experience and financial capacity are satisfactory based on the size and complexity of the project. When assessing the developer, the participating jurisdiction must review, at minimum, prior experience with similar projects and the current capacity to develop the proposed project. When determining whether the developer has the financial capacity to undertake the project, the participating jurisdiction should examine financial statements and audits to determine the developer's net worth, portfolio risk, pre-development funding, and liquidity.

d. Firm written financial commitments for the project.

e. A careful review of the project's operating budget, including the assumptions, projections of a project's net operating income, and reasonably expected increases in revenue and expenses during the minimum compliance period, to determine if any HOME-ARP-funded operating cost assistance is necessary and if applicable, an operating cost assistance reserve is sized appropriately. Operating income of the project must be sufficient to cover operating expenses through the minimum compliance period. For HOME-ARP units for qualifying households, the proforma or projections should include any anticipated ongoing operating cost assistance or draws from an operating cost assistance reserve, if applicable, that will offset operating deficits associated with those units to demonstrate sufficient operating support. If project-based vouchers or project-based rental assistance will be awarded, this analysis must include that rental assistance revenue because operating cost assistance cannot be used for

units for qualifying households with project-based vouchers or project-based rental assistance. A participating jurisdiction's underwriting standards may permit projects to generate reasonable net operating income throughout the minimum compliance period. However, HOME-ARP operating cost assistance may only be used to offset operating deficits, in accordance with the requirements of the HOME-ARP Notice. Net operating income resulting from HOME-ARP operating cost assistance is not permitted and must be prohibited in the written agreement between the participating jurisdiction and the owner.

f. An assessment of the project's overall viability through the minimum compliance period based on the households (*i.e.,* qualifying households, low-income households, market-rate households) it will serve.

*(2) Developer Fee.* A developer fee is a permitted development cost under the HOME-ARP program, but the participating jurisdiction must review the fee and determine that it is reasonable. A participating jurisdiction may set limits on the developer fee and other fees (*e.g.,* asset management fee, property management fee) to be paid by HOME-ARP funds that differ from other funding sources (*e.g.,* Low-Income Housing Tax Credit underwriting standards).

*(3) Underwriting and Subsidy Layering Review Standards.* Before the HOME-ARP funds can be committed to a HOME-ARP rental project, participating jurisdictions must evaluate the project to determine the amount of HOME-ARP capital subsidy and operating cost assistance necessary to provide quality affordable housing that meets the requirements of the HOME-ARP Notice and is financially viable for the minimum 15-year HOME-ARP compliance period. The participating jurisdiction must evaluate the project in accordance with underwriting and subsidy layering guidelines it has developed for HOME-ARP projects.

*(4) Underwriting and Subsidy Layering Commitment Requirements.* The participating jurisdiction's project underwriting must include an in-depth review of underlying project assumptions, development sources and uses, and projected operating income and expenses, and the project's long-term financial viability to determine the project's need for HOME-ARP assistance while preventing over-subsidization of the project. Participating jurisdictions must take a holistic approach to underwriting that examines the overall feasibility of the entire project to determine that the property will be financially sustainable for the duration of the 15-year HOME-ARP compliance period.

For projects that will receive operating cost assistance through a capitalized operating cost assistance reserve or on-going operating cost assistance for a specific period, the on-going operating cost assistance or operating cost assistance reserve must be included in the underwriting. Unless placed into an operating cost assistance reserve, operating cost assistance committed to a project for a specific period cannot be provided beyond the budget period, as described in Section VIII.C.4 of the HOME-ARP Notice. HOME-ARP units that have commitments for project-based rental assistance must be underwritten with the projected rental assistance and not with operating cost assistance. An operating cost assistance reserve must be sized based on an analysis of projected operating deficits remaining after the expected payments toward rent by qualifying households are applied to the HOME-ARP unit's share of actual operating costs. However, the participating jurisdiction, through its underwriting, must also determine that the HOME-ARP capital and operating subsidies do not result in over-subsidization of the project.

2. *Property Standards.* The property standards in 24 CFR 92.251 shall apply to all HOME-ARP rental activities except that:

The requirements in 24 CFR 92.251(c)(3) shall not apply and are waived because homeownership is not an eligible activity for HOME-ARP funds.

HOME-ARP rental units must comply with the ongoing property condition standards of 24 CFR 92.251(f) throughout the compliance period as demonstrated by an on-site inspection within 12 months of project completion and an on-site inspection at least once every three years thereafter as required by 24 CFR 92.504(d)(1)(ii).

3. *Lease-up of HOME-ARP rental units.* The requirement in 24 CFR 92.252 that states that HUD will require the participating jurisdiction to repay HOME funds invested in any housing unit that has not been rented to eligible tenants 18 months after the date of project completion is waived. Instead, as an alternative requirement, if the HOME-ARP units are not occupied by eligible qualifying households or low-income households, in accordance with the unit restrictions, within six months following project completion, the participating jurisdiction, as applicable, must submit to HUD information on its efforts to coordinate with a CoC, homeless service providers, social service and other public agencies to fill units for qualifying households or must submit marketing information and, if appropriate, a marketing plan to fill units for low-income households. The participating jurisdiction must repay any HOME-ARP funds invested in units that are not rented to eligible qualifying or low-income households within 12 months of project completion.

4. *Rent limitations, initial rent schedule, and utility allowances for HOME-ARP rental housing.* The requirements in 24 CFR 92.252(a)-(d) are waived and the following alternative requirements shall apply:

*(1) Rent limitations for units restricted for occupancy by Qualifying Households.* In no case can the HOME-ARP rents exceed 30 percent of the adjusted income of a household whose annual income is equal to or less than 50 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. HUD will publish the HOME-ARP rent limits on an annual basis.

Notwithstanding the foregoing, a unit that receives a Federal or state project-based rental subsidy and is occupied by a very low-income household that pays as a contribution to rent no more than 30 percent of the household's adjusted income, may charge the rent allowable under the Federal or state project-based rental subsidy program (*i.e.,* the tenant rental contribution plus the rental subsidy allowable under that program). If a household receives tenant-based rental assistance, the rent is the rent permissible under the applicable rental assistance program (*i.e.,* the tenant rental contribution plus the rental subsidy allowable under that rental assistance program).

The rent limits for HOME-ARP qualifying populations include the rent plus the utility allowance established pursuant to Section VI.B.13.d of the HOME-ARP Notice.

*(2) Rent limitations—low-income households.* HOME-ARP rental units occupied by low-income households must comply with the rent limitations in 24 CFR 92.252(a) (*i.e.,* the lesser of the Fair Market Rent for existing housing for comparable units in the area, as established by HUD, or a rent equal to 30 percent of the income of a family at 65 percent of median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit). Notwithstanding the foregoing, when a household receives assistance from a Federal tenant-based rental assistance (*e.g.,* housing choice vouchers), the rent is the rent permissible under the applicable rental assistance program (*i.e.,* the tenant rental contribution plus the rent subsidy allowable under the rental assistance program). The rent limits for low-income households apply to the rent plus the utility allowance established pursuant to Section VI.B.13.d of the HOME-ARP Notice.

*(3) Rent limitations—Single Room Occupancy (SRO) Units.* A HOME-ARP rental project may consist of SRO units. For the purposes of HOME-ARP rental activities, a SRO unit is defined as a unit that is the primary residence of the occupant(s) and must at least contain sanitary facilities but may also contain food preparation facilities. A project's designation as a SRO cannot be inconsistent with the building's zoning and building code classification. If the SRO units have both sanitary and food preparation facilities, the maximum HOME-ARP rent is based on the zero-bedroom fair market rent. If the SRO unit has only sanitary facilities, the maximum HOME-ARP rent is based on 75 percent of the zero-bedroom fair market rent. The rent limits for SRO units must also include the utility allowance established pursuant to Section VI.B.13.d of the HOME-ARP Notice.

*(4) Initial Rent Schedule and Utility Allowance.* The participating jurisdiction must establish maximum allowances for utilities and services and update the allowances annually. The participating jurisdiction may adopt the utility allowance schedule of the PHA. The participating jurisdiction must review and approve the HOME-ARP rents proposed by the owner, subject to the HOME-ARP rent limitations. For HOME-ARP units where the tenant is paying utilities and services (*e.g.,* trash collection), the participating jurisdiction must determine that the rent for the unit does not exceed the maximum rent minus the monthly allowance for utilities and services.

5. *Affordability requirements and limited waiver and alternative requirement to period of affordability requirements.* The requirement that affordability restrictions must remain in place for the amount of time in the table specifying the minimum period of affordability in 24 CFR 92.252(e) is waived. HUD is specifying that as an alternative requirement, HOME-ARP-assisted rental units must comply with the requirements of the HOME-ARP Notice in serving the qualifying households and, to the extent applicable, low-income households, for a minimum period of 15 years, irrespective of the amount of HOME-ARP funds invested in the project or the development activity being undertaken. Additionally, HUD is specifying the following alternative requirements to the use restriction requirements in 24 CFR 92.252(e)(1):

(1) Units restricted for occupancy by qualifying populations must be occupied by households that meet the definition of a qualifying population at the time of initial occupancy. The household's contribution toward rent during this period must be affordable in accordance with the HOME-ARP Notice. The rents for these units must comply with the rent limitations established in the HOME-ARP Notice, including the rent provisions specified in 24 CFR 92.252(i)(2) for households whose income increases above 80 percent of area median income and whose contribution to rent complies with the requirements in Section VI.B.15 of the HOME-ARP Notice.

(2) Units available for low-income households must be continuously occupied by households who are income eligible. The rents for these units must comply with the rent limitations established in the HOME-ARP Notice, including the rent provisions specified in 24 CFR 92.252(i)(2) for households whose income increases above 80 percent of area median income.

(3) If a project-based rental assistance Housing Assistance Payments (HAP) contract is awarded to a HOME-ARP rental project, a participating jurisdiction must impose a minimum compliance period that is the greater of 15 years or the term of the HAP contract. Participating jurisdictions are also encouraged to extend restrictions for occupancy of the HOME-ARP units in accordance with the requirements in this section to match eligible HAP contract renewals.

6. *Adjustment of HOME rent limits for an existing project.* The requirements of 24 CFR 92.252(g) are waived.

7. *Tenant income restrictions and tenant rental contribution requirements for HOME-ARP rental projects and limited waiver and alternative requirements.* The requirements at 24 CFR 92.203 and 24 CFR 92.252(h) and (i) shall apply except that they are waived to the extent that they differ from the following alternative requirements:

*(1) Household income at Initial Occupancy—Qualifying Households.* The participating jurisdiction must require all HOME-ARP rental units be restricted for occupancy by eligible households throughout the minimum compliance period. Qualifying households are eligible for admission to HOME-ARP rental units solely by meeting the definition of one of the qualifying populations (*i.e.,* HOME-ARP does not impose income restrictions on units restricted for qualifying populations). If there is no income requirement in the qualifying population's definition, a participating jurisdiction is not required to perform an initial determination of household income except as necessary to determine an affordable rental contribution by the qualifying household or to establish eligibility for another funding source in the unit that imposes income restrictions (*e.g.,* LIHTC).

*(2) Household income in Subsequent Years—Qualifying Households.* Each year during the compliance period, starting 1 year after initial occupancy, the participating jurisdiction must use the definition of annual income as defined in 24 CFR 5.609 to examine the income of qualifying households to determine the household's contribution to rent. For low-income households, the participating jurisdiction must use the definition of annual income as defined in 24 CFR 5.609 to examine the household's income at initial occupancy and each subsequent year during the compliance period to determine the household's ongoing income eligibility and applicable rental contribution.

a. *Qualifying populations.* For purposes of establishing the qualifying household's rental contribution after initial occupancy, a participating jurisdiction must examine a HOME-ARP qualifying household's income using 24 CFR 92.203(a)(1)(i) or (iii), starting 1 year after initial occupancy. Each year during the minimum compliance period, the owner must examine the household's annual income in accordance with any one of the options in 24 CFR 92.203(a)(1) specified by the participating jurisdiction. A project owner who re-examines household income through a statement and certification in accordance with 24 CFR 92.203(a)(1)(ii), must examine the income of each household, in accordance with 24 CFR 92.203(a)(1)(i), every sixth year of the compliance period. Otherwise, an owner who accepts the household's statement and certification in accordance with 24 CFR 92.203(a)(1)(ii) is not required to examine the household's income unless there is evidence that the household's written statement failed to completely and accurately state information about the household's size or income.

b. *Over-income—Temporary noncompliance.* HOME-ARP-assisted units restricted for low-income households continue to qualify as HOME-ARP rental housing despite a temporary noncompliance caused by increases in the incomes of existing households if actions satisfactory to HUD are taken so that all vacancies are filled in accordance with HOME-ARP requirements until the noncompliance is corrected.

c. *Changes in income—Qualifying households.* A household that met the definition of one of the HOME-ARP qualifying populations at initial occupancy and whose annual income at the time of income re-certification is above 50 percent of median income for the area but at or below 80 percent of the median income for the area must pay the rent specified in 24 CFR 92.252(a).

d. *Changes in income—Low-income Households or Qualifying households.* A household that is not low-income at the time of income re-certification (*i.e.,* whose income is above 80 percent of the median income for the area) must pay rent that complies with the over income regulatory requirements at 24 CFR 92.252(i)(2).

e. *Household income—Low-income Households.* In accordance with 24 CFR 92.252(h), the income of each low-income household must be determined initially in accordance with 24 CFR 92.203(a)(1)(i), and each year following the initial determination during the minimum compliance period in accordance with any one of the options in 24 CFR 92.203(a)(1) specified by the participating jurisdiction. An owner who re-examines household income through a statement and certification in accordance with 24 CFR 92.203(a)(1)(ii), must examine the income of each household, in accordance with 24 CFR 92.203(a)(1)(i), every sixth year of the minimum compliance period. Otherwise, an owner who accepts the household's statement and certification in accordance with 24 CFR 92.203(a)(1)(ii) is not required to examine the household's income unless there is evidence that the household's written statement failed to completely and accurately state information about the household's size or income.

*f. Alternative Requirement for Households Assisted by Other Programs.* Notwithstanding the alternative requirements specified above or the provisions of 24 CFR 92.203, if a family is applying for or living in a HOME-ARP-assisted rental unit, and the unit is assisted by a Federal or State project based rental subsidy then a participating jurisdiction must accept the public housing agency, section 8 project owner, or Continuum of Care recipient or subrecipient's determination of the family's annual income and adjusted income under that program's and does not need to obtain source documentation in accordance with 24 CFR 92.203(a)(1) or calculate the annual income of the family. If a family is applying for or living in a HOME-ARP-assisted rental unit, and the family is assisted by a Federal tenant-based rental assistance program (*e.g.,* housing choice vouchers, etc.) then a participating jurisdiction may choose to accept the rental assistance provider's determination of the family's annual and adjusted income under that program's rules without need for review under 24 CFR 92.203(a)(1).

8. *Tenant selection in HOME-ARP rental housing projects.* Except for affirmative marketing requirements in 24 CFR 92.351 and VAWA requirements, the requirements in 24 CFR 92.252(k) and 24 CFR 92.253(d) are waived to the extent that they differ from the following alternative requirements:

*(1) Use of Coordinated Entry System or Project-Specific Waitlists.* In accordance with Section IV.C of the HOME-ARP Notice, participating jurisdictions must determine whether an owner may use a CoC's CE, a CoC's CE and other referral sources, or a project-specific waitlist to select qualifying households for HOME-ARP units restricted

for occupancy by qualifying populations in accordance with the HOME-ARP Notice. The participating jurisdiction may also use a waiting list to receive referrals from a CoC CE and other referral agencies for a project or activity, where a CoC CE or other referral agency refers an applicant that is placed on the waiting list for that project or activity in chronological order. Participating jurisdictions will make this determination on a project-by-project basis. Regardless of which method is selected, in all cases, the participating jurisdiction must use a project-specific waitlist when selecting households to occupy units restricted for occupancy by low-income households. Any preferences among qualifying households must be disclosed in the HOME-ARP allocation plan through the participating jurisdiction's public participation process in accordance with Section V.C of the HOME-ARP Notice. The written agreement between the participating jurisdiction and the project owner must specify the method the owner must use for selecting qualifying households for admission to HOME-ARP units.

The owner of a HOME-ARP rental project must adopt and follow written tenant selection policies and criteria for HOME-ARP units that:

a. Limit eligibility to households that meet one of the HOME-ARP qualifying populations definitions or low-income households in accordance with HOME-ARP requirements. Preference for households must comply with the participating jurisdiction's preferences and the participating jurisdiction's policies and procedures for applying the preferences, if any, and must not violate nondiscrimination requirements in 24 CFR 92.350.

b. Do not exclude an applicant with a voucher under the Section 8 Housing Choice Voucher Program (24 CFR 982), or an applicant participating in a HOME, HOME-ARP or other Federal, state, or local tenant-based rental assistance program because of the status of the prospective tenant as a holder of such a certificate, voucher, or comparable tenant-based assistance document.

c. Limit eligibility or gives a preference to a particular qualifying population or segment of the qualifying population if permitted in its written agreement with the participating jurisdiction (and only if the limitation or preference is described in the participating jurisdiction's HOME-ARP allocation plan). A preference for households in one or more of the HOME-ARP qualifying populations must comply with the participating jurisdiction's determined preference(s) and the participating jurisdiction's policies and procedures for applying the preference(s), if any;

d. Any limitation or preference must not violate nondiscrimination requirements in 24 CFR 92.350. If the participating jurisdiction requires the use of a project-specific waitlist to select qualifying households and/or low-income households for occupancy of HOME-ARP units, provide for the selection of households from a written waiting list in the chronological order of their application, insofar as is practicable.

e. Give prompt written notification to any rejected applicant of the grounds for any rejection, and

f. Complies with the VAWA requirements as described in 24 CFR 92.359.

*(2) Use of preferences for Qualifying Households.* Any preferences for qualifying households must be disclosed in the HOME-ARP allocation plan through the participating jurisdiction's public participation process. The written agreement between the participating jurisdiction and the project owner must specify the method the owner must use for prioritizing applicants for admission to HOME-ARP units.

9. *Tenant protections in HOME-ARP rental units.* The requirements of Section 225 of NAHA (42 U.S.C. 12755) and 24 CFR 92.253(a)–(c) shall apply to HOME-ARP rental projects except to the extent that they differ from the following alternative requirements:

*(1) Use of Master Leases.* Section 225 of NAHA (42 U.S.C. 12755) and 24 CFR 92.253(a) are waived to the extent that they are interpreted as barring an owner from leasing a unit to a nonprofit organization that would sublease that unit to a qualifying household or to the extent that it is interpreted as barring an owner of a HOME-ARP unit from executing a master lease with a nonprofit organization for HOME-ARP units restricted for occupancy by qualifying households. As an alternative requirement, an owner may execute a lease or master lease with a nonprofit organization, known as a HOME-ARP sponsor. A HOME-ARP sponsor is a nonprofit organization that provides housing or supportive services to qualifying households and facilitates the leasing of a HOME-ARP rental unit to a qualifying household or the use and maintenance of HOME-ARP TBRA by a qualifying household. Participating jurisdictions may permit a HOME-ARP sponsor to lease a HOME-ARP unit from an owner or execute a master lease with the owner of a HOME-ARP project for HOME-ARP units restricted for occupancy by qualifying households. The HOME-ARP sponsor may then sublease the HOME-ARP rental unit to the qualifying household. The sublease between the HOME-ARP sponsor and the qualifying household must comply with the rent limitations and tenant protection requirements of the HOME-ARP Notice, including the Appendix in this notice.

*(2) Termination of tenancy.* HUD is applying the requirements of 24 CFR 92.253(c) to termination of tenancy and, as an alternative requirement, also applying the protections of 24 CFR 92.253(c) to termination of Master Leases that effectuate the tenancy of qualifying households. HUD is also specifying the following alternative requirement for termination of tenancy for qualifying households in projects that capitalized operating cost assistance reserves or where there is a current contract for the participating jurisdiction to provide operating cost assistance to the project. In those cases, an owner may not terminate the tenancy or refuse to renew the lease of a qualifying household because of the household's inability to pay rent during the compliance period. A qualifying household's inability to pay rent shall mean that the qualifying household cannot pay more than 30 percent of the qualifying household's income toward rent, based on an income determination made by the participating jurisdiction in the last 30 days.

To terminate or refuse to renew tenancy for any household occupying a HOME-ARP unit, the owner must serve written notice upon the tenant (and the HOME-ARP sponsor if the lease is between an owner and sponsor), specifying the grounds for the action at least 30 days before termination of tenancy. In the case of a sublease, to terminate or refuse to renew tenancy of a qualifying household, the HOME-ARP sponsor, in accordance with the policy established by the participating jurisdiction, must notify the participating jurisdiction in advance of serving written notice to the qualifying household and must serve written notice upon the qualifying household at least 30 days before termination of tenancy, specifying the grounds for the action.

*(3) Prohibited Lease Terms.* The requirements in 24 CFR 92.253(b) that prohibit owners from placing certain terms in their lease agreements shall continue to apply. HUD is also specifying an alternative requirement that the prohibited lease terms in 24 CFR 92.253(b) may not be placed into a sublease between a HOME-ARP sponsor and a qualifying household.

**G. Subpart G—Community Housing Development Organizations**

The requirements in sections 232, 233, 234(a) of NAHA (42 U.S.C. 12772, 12773, 12774(a)) and 24 CFR 92.300, 92.301, 92.302, and 92.303 are waived and do not apply to HOME-ARP.

**H. Subpart H—Other Federal Requirements**

1. *Nondiscrimination, affirmative marketing, and minority outreach program requirements.* The requirements of 24 CFR 92.350 and 24 CFR 92.351 shall apply to all HOME-ARP activities, including Non-Congregate Shelter and Supportive Services activities. Section 3205, section 3205 (d)(4) of the ARP states that the Secretary may not waive or specify alternative requirements for any provision or regulation related to fair housing or nondiscrimination.

2. *Environmental review requirements and labor standards.* The requirements of 24 CFR 92.352 and 24 CFR 92.354 shall apply to all eligible HOME-ARP activities, including Non-Congregate Shelter and Supportive Services activities. Section 3205 (d)(4) of ARP states that the Secretary may not waive or specify alternative requirements to labor standards and environment.

3. *Applicability of lead-based paint requirements.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, J, K, M, and R apply to HOME-ARP-assisted activities.

For the HOME-ARP Non-Congregate Shelter activity, a project must comply with 24 CFR part 35, subpart K when the HOME-ARP activity is acquisition only. HOME-ARP NCS projects that involve rehabilitation of

pre-1978 facilities, whether the rehabilitation is funded with HOME-ARP or other funds, must comply with the requirements of 24 CFR part 35, subpart J.

4. *Conflicts of interest requirements.* The requirements of 24 CFR 92.356 shall apply to all participating jurisdictions, State recipients, and subrecipients engaging in any HOME-ARP activities. For purposes of implementing HOME-ARP provisions for Non-Congregate Shelters, owners and developers of HOME-ARP Non-Congregate Shelters shall be subject to 24 CFR 92.356(f). The following alternative requirements shall apply to all participating jurisdictions, State recipients, and subrecipients engaging in any HOME-ARP activities.

*(1) Written Standards of Conduct.* Consistent with current regulations, participating jurisdictions, State recipients, and subrecipients must maintain written standards of conduct covering the conflicts of interest and organizational conflicts of interest requirements under the HOME-ARP Notice and 2 CFR 200.318. In addition to current regulatory requirements, HUD is requiring that all participating jurisdictions, State recipients and subrecipients maintain written standards of conduct that also provide for internal controls and procedures to ensure a fair and open selection process for awarding HOME-ARP funds pursuant to the HOME-ARP Notice. These standards must include provisions on if and how CoC board members may participate in and/or influence discussions or resulting decisions concerning the competition or selection of an award or other financial benefits made pursuant to the HOME-ARP Notice, including internal controls on when funds may be awarded to the organization that the member represents.

*(2) Organizational Conflicts of Interest.* The provision of any type or amount of HOME-ARP TBRA or supportive services may not be conditioned on an individual's or family's acceptance or occupancy of a shelter or housing unit owned by the participating jurisdiction; State recipients; the subrecipient; or a parent, affiliate, or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent, affiliate, or subsidiary of the subrecipient, administer financial assistance that includes rental payments, utility deposits, security deposits, and/or first and last month's rent pursuant to the HOME-ARP Notice. All contractors of the participating jurisdiction, State recipients, or subrecipient must comply with the same requirements that apply to subrecipients under this section.

*(3) Requesting Exceptions to Organizational Conflicts of Interest.* Any request for an exception to the organizational conflicts of interest provisions in the HOME-ARP Notice shall be in writing and shall be considered by HUD only after the participating jurisdiction or State recipient has provided the following:

a. A written disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

b. An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

*(4) Granting Exceptions to Organizational Conflicts of Interest.* HUD shall determine whether to grant an exception to the organizational conflicts of interest on a case-by-case basis when it determines that the exception will serve to further the purposes of HOME-ARP. HUD shall consider the following factors, as applicable, in determining whether to grant such an exception:

a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

b. Whether undue hardship will result to the participating jurisdiction, State recipient, subrecipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict;

c. Whether conditioning approval on changes to the participating jurisdiction, State recipient, or subrecipient's policies or procedures can adequately address the organizational conflict of interest; and

d. Any other factors relevant to HUD's determination, including the timing of the requested exception.

5. *Applicability of displacement, relocation, and acquisition requirements and waiver of one-for-one replacement requirements.* The requirements of 24 CFR 92.353, which also implement the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, (42 U.S.C. 4201 *et seq.*) (URA), the URA's implementing requirements at 49 CFR part 24, and section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304) and its implementing regulations at 24 CFR part 42, shall apply to all projects receiving HOME-ARP funds except for the following waiver and alternative requirement. For purposes of the one-for-one replacement housing requirements of section 104(d)(2)(A)(i) and (ii) and (d)(3) (42 U.S.C. 5304(d)(2)(A)(i) and (ii) and 42 U.S.C. 5304(d)(3)) and 24 CFR 42.375, lower-income dwelling units shall not include single-room occupancy (SRO) units or residential hotel or motel units in jurisdictions where those units are considered dwelling units under state or local law.

6. *Regulations on consultant activities.* The requirements of 24 CFR 92.358 are not waived.

7. *Violence Against Women Act Requirements.* The requirements of 24 CFR 92.359 are not waived.

**I. Subpart I—Technical Assistance**

Applicability of requirements on provision of Technical Assistance in support of HOME-ARP activities. The requirements of 24 CFR 92.400 are waived and shall not apply to the extent that they restrict the Department's ability to provide Technical Assistance funds allocated to the Department under section 3205(d)(2) of ARP without competition, and to the extent that their application of Subpart C of NAHA (42 U.S.C. 12781 *et seq.*) would restrict capacity building to affordable housing activities rather than the broader set of eligible HOME-ARP activities.

**J. Subpart J—Reallocations**

Reallocation of HOME-ARP Funds. The requirements of section 216 of NAHA (42 U.S.C. 12746), section 217 of NAHA (42 U.S.C. 12747), 24 CFR 92.66, 24 CFR 92.107, 24 CFR 92.450, 24 CFR 92.451(a), 24 CFR 92.452, 24 CFR 92.453 and 24 CFR 92.454 shall not apply to HOME-ARP funds and are waived to the extent they differ from the following alternative requirements for reallocations:

*(1) Participating Jurisdictions.* For any participating jurisdiction that refuses to accept its allocation of HOME-ARP funds, does not have its HOME-ARP allocation plan accepted by HUD, or has its designation revoked during the period of availability of HOME-ARP funds, HUD shall reallocate the participating jurisdiction's unspent HOME-ARP funds to the State jurisdiction in accordance with 24 CFR 92.451(b) and (c).

*(2) State Jurisdictions.* For any State jurisdiction that refuses to accept its allocation of HOME-ARP funds, does not have its HOME-ARP allocation plan accepted by HUD, or has its designation revoked during the period of availability of HOME-ARP funds, HUD shall reallocate the State jurisdiction's unspent HOME-ARP funds in accordance with 24 CFR 92.451(b) and (c).

*Insular areas.* For any insular area that refuses to accept its allocation of HOME-ARP funds, does not have its HOME-ARP allocation plan accepted by HUD, or has its designation revoked during the period of availability of HOME-ARP funds, HUD shall reallocate the insular area's unspent HOME-ARP funds proportionally to the remaining insular areas participating in the HOME-ARP program.

*(3) Annual Reallocation.* Reallocations of funds pursuant to the above waivers and alternative requirements shall be performed annually, if practicable.

**K. Subpart K—Program Administration**

1. *The HOME Investment Trust Fund.* The requirements in 24 CFR 92.500 apply to HOME-ARP, except § 92.500(b) is waived and the following alternative requirement is imposed:

*Treasury Account.* The United States Treasury account of the HOME Investment Trust Fund includes funds allocated to the participating jurisdiction under HOME-ARP and funds reallocated to the participating jurisdiction under subpart J of 24 CFR part 92.

The requirements in section 218(c)(2) of NAHA (42 U.S.C. 12748(c)(2)), 24 CFR 92.500(c)(2), (d)(1)(i)–(iii), and (d)(2) are waived and do not apply to HOME-ARP.

2. *HOME Investment Partnership Agreement.* The requirements in 24 CFR 92.501 are waived and the following alternative requirements are imposed:

Allocated and reallocated HOME-ARP funds will be made available pursuant to a HOME-ARP Grant Agreement. The agreement requires that HOME-ARP funds invested in HOME-ARP activities are repayable if the activity does not comply with the requirements in the HOME-ARP Notice and any subsequent amendments.

After the date of the HOME-ARP Notice, the participating jurisdiction and HUD may enter into a HOME-ARP Grant Agreement for the use of its HOME-ARP allocation pursuant to the HOME-ARP Notice. After the obligation date identified in the HOME-ARP Grant Agreement, a participating jurisdiction may use up to 5 percent of its HOME-ARP award for eligible administrative and planning costs in 24 CFR 92.207. The participating jurisdiction may not incur any costs or expend any funds for costs other than administrative and planning costs before the HOME-ARP allocation plan is accepted by HUD as described in the HOME-ARP Notice.

If the participating jurisdiction does not submit a HOME-ARP allocation plan, if the participating jurisdiction's plan is not accepted within a reasonable period of time, as determined by HUD, or if the subrecipient or contractor administering a participating jurisdiction's entire HOME-ARP award is not included in the HOME-ARP allocation plan, in accordance with the HOME-ARP Notice, all HOME-ARP costs incurred by the participating jurisdiction (or its subrecipient or contractor) are ineligible costs and any HOME-ARP funds expended by the participating jurisdiction must be repaid to the participating jurisdiction's HOME Investment Trust Fund Treasury account, in accordance with guidance from HUD.

3. *Program disbursement and information system.* The requirements in 24 CFR 92.502(b) are waived to the extent they conflict with the alternative requirement that HOME-ARP investments for acquisition, new construction, or rehabilitation of housing or non-congregate shelter, the provision of tenant-based rental assistance, and the provision of supportive services must be set up as projects in the Integrated Disbursement and Information System. The requirements in 24 CFR 92.502(c)(3) are waived and do not apply to HOME-ARP.

4. *Program income and repayments.* A participating jurisdiction must comply with the requirements for program income and repayments in the HOME-ARP Notice. The requirements in 24 CFR 92.503 apply to the use of HOME-ARP funds, except that the requirements in § 92.503(a)(2), (b)(3), (c)(3), (c)(4), and (d) are waived and the following alternative requirements apply:

*(1) Program income.* If a jurisdiction is not a participating jurisdiction in HOME or HOME-ARP when the HOME-ARP program income is received, the funds must be remitted to HUD and reallocated, in accordance with 24 CFR 92.454 and the HOME-ARP Notice.

*(2) Repayments.* A participating jurisdiction must repay HOME-ARP funds to the HOME Investment Trust Fund Treasury account. If the jurisdiction is not a participating jurisdiction for HOME or HOME-ARP at the time the repayment is made, the funds must be remitted to HUD and reallocated, in accordance with 24 CFR 92.454 and the HOME-ARP Notice.

5. *Participating jurisdiction responsibilities; written agreements; on-site inspection.* HUD waives 24 CFR 92.504, except for those provisions that reference the requirements of 24 CFR 92.350, 24 CFR 92.351, and 24 CFR 92.359, and imposes the following alternative requirements for § 92.504:

(a) *Responsibilities.* The participating jurisdiction is responsible for managing the day-to-day operations of its HOME-ARP–ARP program, ensuring that HOME-ARP funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance and compliance of each contractor, State recipient, and subrecipient must be reviewed at least annually. The participating jurisdiction must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with HOME-ARP Notice, to ensure that the requirements of this part are met.

(b) *Executing a written agreement.* Before disbursing any HOME-ARP funds to any entity, the participating jurisdiction must enter into a written agreement with that entity. Before disbursing any HOME-ARP funds to any entity, a State recipient, subrecipient, or contractor which is administering all or a part of the HOME-ARP program on behalf of the participating jurisdiction, must also enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of the HOME-ARP Notice.

(c) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. The written agreement must contain the applicable minimum provisions for a written agreement in the HOME-ARP Notice based on the project or activity (*e.g.,* HOME-ARP rental housing, non-congregate shelter, tenant-based rental assistance, or supportive services) and the basic requirements and minimum provisions by role described in this section.

(1) *State recipient.* The provisions in the written agreement between the State and a State recipient will depend on the program functions that the State specifies the State recipient will carry out in accordance with 24 CFR 92.201(b). The written agreement must require the State recipient to comply with State's requirements, including underwriting, refinancing guidelines, and applicable requirements described in the HOME-ARP Notice.

(i) *Use of the HOME-ARP funds.* The agreement with a State recipient must describe the amount and use of the HOME-ARP funds to administer one or more HOME-ARP programs, including the type and number of projects to be funded, tasks to be performed, a schedule for completing the tasks, duration of the agreement, and a budget for each program. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction or State to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require projects assisted with HOME-ARP funds to meet the requirements of the HOME-ARP Notice, as applicable, and must require repayment of the funds if the project does not meet the requirements for the specified time period.

(iii) *Program income.* The agreement must state if program income is to be remitted to the State or to be retained by the State recipient for additional eligible activities.

(iv) *Uniform administrative requirements.* The agreement must require the State recipient or subrecipient to comply with applicable uniform administrative requirements described in 24 CFR 92.505, as revised by the Appendix to the HOME-ARP–ARP Notice.

(v) *Project requirement.* The agreement must require compliance with requirements in the HOME-ARP Notice, in accordance with the type of project assisted. The agreement must state whether the State is permitting a preference for a qualifying population or segment of a qualifying population. The written agreement must contain provisions requiring the method of tenant selection to be used in accordance with the requirements of the HOME-ARP Notice.

(vi) *Other program requirements.* The agreement must require the State recipient to carry out each activity in compliance with the HOME-ARP Notice and all Federal laws and regulations described in subpart H of 24 CFR part 92, except that the State recipient does not assume the State's responsibilities for release of funds under 24 CFR 92.352 and the intergovernmental review process in 24 CFR 92.357 does not apply to the State recipient. If HOME-ARP funds are provided, the agreement must set forth all obligations the State imposes on the State recipient in order to meet the VAWA requirements under 24 CFR 92.359, including notice obligations and any obligations with respect to the emergency transfer plan (including whether the State recipient must develop its own plan or follow the State's plan).

(vii) *Affirmative marketing.* The agreement must specify the State recipient's affirmative marketing responsibilities in accordance with 24 CFR 92.351.

(viii) *Requests for disbursement of funds.* The agreement must specify that the State recipient may not request disbursement of HOME-ARP funds under this agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the State recipient requests funds from the State.

(ix) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the State in meeting its recordkeeping and reporting requirements.

(x) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of affordable housing or non-congregate shelter requirements by the State or the intended beneficiaries, if the State recipient will be the owner at project completion of the affordable housing or non-congregate shelter. The means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The applicable requirements as

described in the HOME-ARP Notice must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the HOME-ARP requirements. The agreement must specify that, in accordance with 2 CFR 200.338, suspension or termination may occur if the State recipient materially fails to comply with any term of the agreement. The State may permit the agreement to be terminated in whole or in part in accordance with 2 CFR 200.339.

(xi) *Written agreement.* Before the State recipient provides funds to for-profit owners or developers, nonprofit owners or developers or sponsors, subrecipients, HOME-ARP owners, sponsors, or tenants (or landlords) receiving tenant-based rental assistance, or contractors who are providing services to the State recipient, the State recipient must have a written agreement with such entities that meets the requirements of this section and the HOME-ARP Notice.

(xii) *Duration of the agreement.* The duration of the agreement will depend on which functions the State recipient performs (*e.g.,* whether the State recipient or the State has responsibility for monitoring rental projects for the period of affordability) and which activities are funded under the agreement. The duration of the agreement must comply with the requirements of the HOME-ARP Notice.

(xiii) *Fees.* The agreement must prohibit the State recipient and its subrecipients, community housing development organizations, and nonprofit organizations from charging servicing, origination, processing, inspection, or other fees for the costs of administering a HOME-ARP program, except as permitted by 24 CFR 92.214, as revised by the Appendix to the HOME-ARP Notice.

(2) *Subrecipient.* A subrecipient is a public agency or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME-ARP programs to produce affordable housing, non-congregate shelter, or provide tenant-based rental assistance or supportive services. The agreement must set forth and require the subrecipient to follow the participating jurisdiction's requirements, including requirements for underwriting, refinancing guidelines, and requirements described in the HOME-ARP Notice.

The agreement between the participating jurisdiction and the subrecipient must include:

(i) *Use of the HOME-ARP funds.* The agreement with a subrecipient must describe the amount and use of the HOME-ARP–ARP funds to administer one or more HOME-ARP–ARP programs, including the type and number of projects to be funded, tasks to be performed, a schedule for completing the tasks, duration of the agreement, and a budget for each program. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction or State to effectively monitor performance under the agreement.

(ii) *Program income.* The agreement must state if program income is to be remitted to the participating jurisdiction or to be retained by the subrecipient for additional eligible activities.

(iii) *Uniform administrative requirements.* The agreement must require the State recipient or subrecipient to comply with applicable uniform administrative requirements described in 24 CFR 92.505 as revised by the Appendix to the HOME-ARP Notice.

(iv) *Other program requirements.* The agreement must require the subrecipient to carry out each activity in compliance with HOME-ARP Notice and all Federal laws and regulations described in subpart H of 24 CFR part 92, except that the subrecipient does not assume the participating jurisdiction's responsibilities for environmental review under 24 CFR 92.352 and the intergovernmental review process in 24 CFR 92.357 does not apply. The agreement must set forth the requirements the subrecipient must follow to enable the participating jurisdiction to carry environmental review responsibilities before HOME-ARP funds are committed to a project. If HOME-ARP funds are being provided, the agreement must set forth all obligations the participating jurisdiction imposes on the subrecipient in order to meet the VAWA requirements under 24 CFR 92.359, including notice obligations and obligations under the emergency transfer plan.

(v) *Affirmative marketing.* The agreement must specify the subrecipient's affirmative marketing responsibilities in accordance with 24 CFR 92.351.

(vi) *Requests for disbursement of funds.* The agreement must specify that the subrecipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subrecipient requests funds from the participating jurisdiction.

(vii) *Reversion of assets.* The agreement must specify that upon expiration of the agreement, the subrecipient must transfer to the participating jurisdiction any HOME-ARP funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME-ARP funds.

(viii) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(ix) *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the agreement. The agreement must specify that, in accordance with 2 CFR 200.338, suspension or termination may occur if the subrecipient materially fails to comply with any term of the agreement. The participating jurisdiction may permit the agreement to be terminated in whole or in part in accordance with 2 CFR 200.339.

(x) *Written agreement.* Before the subrecipient provides HOME-ARP funds to for-profit owners or developers, nonprofit owners or developers or sponsors, subrecipients, HOME-ARP owners, sponsors, tenants (or landlords) receiving tenant-based rental assistance, or contractors, the subrecipient must have a written agreement that meets the requirements of this section and the HOME-ARP Notice. The agreement must state if repayment of HOME-ARP funds or recaptured HOME-ARP funds must be remitted to the participating jurisdiction or retained by the subrecipient for additional eligible activities.

(xi) *Fees.* The agreement must prohibit the subrecipient and any community housing development organizations from charging servicing, origination, or other fees for the costs of administering the HOME-ARP program, except as permitted by 24 CFR 92.214, as revised by the Appendix to the HOME-ARP Notice.

(3) *For-profit or nonprofit housing owner, sponsor, or developer (other than single-family owner-occupant).* The participating jurisdiction may preliminarily award HOME-ARP funds for a proposed project, contingent on conditions such as obtaining other financing for the project. This preliminary award is not a commitment to a project. The written agreement committing the HOME-ARP funds to the project must meet the requirements of ''commit to a specific local project'' in the definition of ''commitment'' in 24 CFR 92.2, as revised by the Appendix to the HOME-ARP Notice and contain the following:

(i) *Use of the HOME-ARP funds.* The agreement between the participating jurisdiction and a for-profit or nonprofit housing owner, sponsor, or developer must describe the address of the project or the legal description of the property if a street address has not been assigned to the property, the use of the HOME-ARP funds and other funds for the project, including the tasks to be performed for the project, a schedule for completing the tasks and the project, and a complete budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement to achieve project completion and compliance with the HOME-ARP requirements;

(ii) *Affordability.* The agreement must require projects assisted with HOME-ARP funds to meet the requirements of the HOME-ARP Notice, as applicable, and must require repayment of the funds if the project does not meet the requirements for the specified time period;

(iii) *Project requirements.* The agreement must require compliance with requirements in the HOME-ARP Notice, in accordance with the type of project assisted. The agreement must state whether the State is permitting a preference for a qualifying population or segment of a qualifying population. The written agreement must contain provisions requiring the method of tenant selection to be used in accordance with the requirements of the HOME-ARP Notice;

(iv) *Property standards.* The agreement must require the housing or shelter to meet the property standards established in the HOME-ARP Notice upon project completion. The agreement must also require owners of rental housing or shelter assisted with HOME-ARP funds to maintain the project in compliance with the HOME-ARP Notice for the duration of the affordability period;

(v) *Other program requirements.* The agreement must require the owner or

developer to carry out each project in compliance with the following requirements of the HOME-ARP Notice:

(A) The agreement must specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with 24 CFR 92.351.

(B) The federal requirements and nondiscrimination established in 24 CFR 92.350.

(C) Any displacement, relocation, and acquisition requirements imposed by the participating jurisdiction consistent with 24 CFR 92.353 and the HOME-ARP Notice.

(D) The labor requirements in 24 CFR 92.354.

(E) The conflicts of interest provisions prescribed in the HOME-ARP Notice.

(F) If HOME-ARP funds are being provided, the agreement must set forth all obligations the participating jurisdiction imposes on the owner in order to meet the VAWA requirements under 24 CFR 92.359, including the owner's notice obligations and owner obligations under the emergency transfer plan.

(vi) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements;

(vii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the HOME-ARP rental housing or non-congregate shelter requirements by the participating jurisdiction and the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The applicable requirements in the HOME-ARP Notice must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the participating jurisdiction has the right to require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement;

(viii) *Requests for disbursement of funds.* The agreement must specify that the developer may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed;

(ix) Omitted;

(x) *Duration of the agreement.* The agreement must specify the duration of the agreement in accordance with the HOME-ARP Notice. If the project assisted under this agreement is rental housing, the agreement must be in effect through the compliance period required by the participating jurisdiction, but in no case less than the minimum compliance period in the HOME-ARP Notice;

(xi) *Fees.* The agreement must prohibit project owners from charging fees that are not customarily charged in rental housing such as laundry room access fees, and other fees. However, rental project owners may charge reasonable application fees to prospective tenants may charge parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and may charge fees for services such as bus transportation or meals, as long as such services are voluntary.

(4) *Contractor.* The participating jurisdiction selects a contractor through applicable procurement procedures and requirements. The contractor provides goods or services in accordance with a written agreement (the contract). For contractors who are administering all or some of the participating jurisdiction's HOME-ARP programs or specific services for one or more programs, the contract must include at a minimum the following provisions:

(i) *Use of the HOME-ARP funds.* The agreement must describe the use of the HOME-ARP funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and the length of the agreement.

(ii) *Program requirements.* The agreement must provide that the contractor is subject to the requirements in 24 CFR part 92 and the HOME-ARP Notice that are applicable to the participating jurisdiction, except 24 CFR 92.505 and 92.506 do not apply, and the contractor cannot assume the participating jurisdiction responsibilities for environmental review, decision making, and action under 24 CFR 92.352. Where the contractor is administering only a portion of the program, the agreement must list the requirements applicable to the activities the contractor is administering. If applicable to the work under the contract, the agreement must set forth all obligations the participating jurisdiction imposes on the contractor in order to meet the VAWA requirements under 24 CFR 92.359, including any notice obligations and any obligations under the emergency transfer plan.

(iii) *Duration of agreement.* The agreement must specify the duration of the contract in accordance with the HOME-ARP Notice. Generally, the duration of a contract should not exceed two years.

(5) *HOME-ARP owner tenant receiving tenant-based rental or security deposit assistance.* When a participating jurisdiction provides assistance to a HOME-ARP owner, sponsor, or tenant, the written agreement, including the rental assistance contract or security deposit contract, must comply with the HOME-ARP Notice.

(6) *Community housing development organization or nonprofit organization receiving assistance for operating expenses.* The agreement must describe the use of HOME-ARP funds for operating expenses; *e.g.,* salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; and materials and supplies. If the community housing development organization or nonprofit organization is not also receiving funds for a HOME-ARP project, the agreement must provide that the community housing development organization or nonprofit organization is expected to receive funds for a project within 24 months of the date of receiving the funds for operating expenses, and must specify the terms and conditions upon which this expectation is based and the consequences of failure to receive funding for a project.

(7) waived and omitted.

(8) *Technical assistance provider to develop the capacity of community housing development organizations or nonprofit organizations in the jurisdiction.* The agreement must identify the specific nonprofit organization(s) to receive capacity building assistance. The agreement must describe the amount and use (scope of work) of the HOME-ARP funds, including a budget, a period of performance, and a schedule for completion.

(9) *Supportive Services Providers.* If participating jurisdictions are using a supportive services provider, participating jurisdictions must document in their written agreement with supportive service providers whether they are authorizing McKinney-Vento supportive services, homelessness prevention services, Housing Counseling services or some combination of the three. Only the supportive services that are authorized in the written agreement may be provided to program participants and only program participants that are eligible for those supportive services may be served. As such, supportive services providers must demonstrate through their documentation that the individuals served were eligible to receive the supportive services that were authorized under the written agreement in order for those costs to be eligible.

While all qualifying households are eligible to receive supportive services under this activity, the participating jurisdiction must establish requirements for documenting eligible costs for an individual or family in a qualifying population (as defined in Section IV.A of the HOME-ARP Notice) as McKinney-Vento supportive services, homelessness prevention services, or Housing Counseling.

If a person is homeless, then the person is eligible to be provided the supportive services as McKinney-Vento supportive services for the costs allowable in Section VI.D.4.c below. If a person is housed and the supportive services are intended to help the program participant regain stability in the program participant's current permanent housing or move into other permanent housing to achieve stability in that housing then the person is eligible for homelessness prevention services for the costs allowable in Section VI.D.4.c.i below. Housing Counseling services may be provided regardless of whether a person is homeless or currently housed.

(d) *On-site inspections and financial oversight.*

(1) *Inspections.* The participating jurisdiction must inspect each rental housing project at project completion and during the compliance period to determine that the project meets the property standards of 24 CFR 92.251. The participating jurisdiction must inspect each non-congregate shelter at project completion and as needed, during the restricted use period, to determine that the project meets the property standards, in accordance with the HOME-ARP Notice.

(i) *Completion inspections.* Before completing the project in the disbursement and information system established by HUD,

the participating jurisdiction must perform an on-site inspection of HOME-ARP rental housing or non-congregate shelter to determine that all contracted work has been completed and that the project complies with the property standards, as described in the HOME-ARP Notice.

(ii) *Ongoing periodic inspections of HOME-ARP-assisted rental housing.* During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME-ARP assisted rental housing to determine compliance with the property standards of 24 CFR 92.251 and to verify the information submitted by the owners in accordance with the requirements of 24 CFR 92.252, as revised by the Appendix to the HOME-ARP Notice. The inspections must be in accordance with the inspection procedures that the participating jurisdiction establishes to meet the inspection requirements of 24 CFR 92.251.

(A) The on-site inspections must occur within 12 months after project completion and at least once every 3 years thereafter during the compliance period.

(B) If there are observed deficiencies for any of the inspectable items in the property standards established by the participating jurisdiction, in accordance with the inspection requirements of 24 CFR 92.251, a follow-up on-site inspection to verify that deficiencies are corrected must occur within 12 months. The participating jurisdiction may establish a list of non-hazardous deficiencies for which correction can be verified by third party documentation (*e.g.,* paid invoice for work order) rather than re-inspection. Health and safety deficiencies must be corrected immediately, in accordance with 24 CFR 92.251. The participating jurisdiction must adopt a more frequent inspection schedule for properties that have been found to have health and safety deficiencies.

(C) The property owner must annually certify to the participating jurisdiction that each building and all HOME-ARP-assisted units in the project are suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the participating jurisdiction to meet the requirements of 24 CFR 92.251.

(D) Inspections must be based on a statistically valid sample of units appropriate for the size of the HOME-ARP-assisted project, as set forth by HUD through notice. For projects with one-to-four HOME-ARP-assisted units, participating jurisdiction must inspect 100 percent of the HOME-ARP-assisted units and the inspectable items (site, building exterior, building systems, and common areas) for each building housing HOME-ARP-assisted units.

(iii) *Annual inspections.* Tenant based rental assistance (TBRA). All housing occupied by tenants receiving HOME-ARP tenant-based rental assistance must meet the standards in 24 CFR 982.401 or the successor requirements as established by HUD. The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-ARP-assisted TBRA to determine compliance with these standards.

(2) *Financial oversight.* During the period of affordability, the participating jurisdiction must examine at least annually the financial condition of HOME-ARP-assisted rental projects with 10 units or more to determine the continued financial viability of the housing and must take actions to correct problems, to the extent feasible.

6. *Applicability of uniform administrative requirements.* The requirements of 24 CFR 92.505 apply to the use of HOME-ARP funds, except HUD waives 24 CFR 92.505 to the extent that it conflicts with the following:

The requirements of 2 CFR part 200, as amended, apply to participating jurisdictions, State recipients, and subrecipients receiving HOME-ARP funds, except for the following provisions: 24 CFR 200.306, 200.307, 200.308 (not applicable to participating jurisdictions), 200.311 (except as provided in 24 CFR 92.257), 200.312, 200.329, 200.333, and 200.334. The provisions of 2 CFR 200.305 apply as modified by 24 CFR 92.502(c) and the HOME-ARP Notice. If there is a conflict between definitions in 2 CFR part 200 and 24 CFR part 92, as revised by the HOME-ARP Notice, the definitions in 24 CFR part 92, as revised by the HOME-ARP Notice, govern. Moreover, if there is a conflict between the provisions of 2 CFR part 200 and the provisions of the HOME-ARP Notice, the provisions of the HOME-ARP Notice govern.

Where regulations in 24 CFR part 92 refer to specific regulations of 2 CFR part 200 that were or are renumbered or revised by amendments to 2 CFR part 200, the requirements that apply to the use of HOME-ARP funds are the applicable requirements in 2 CFR part 200, as amended, notwithstanding the renumbered regulatory reference.

7. *Confidentiality.* 24 CFR 92.504 and 24 CFR 92.508(a)(3) are waived only to the extent that they conflict with the following alternative requirements:

*Confidentiality Requirements.* The participating jurisdiction, subrecipients, owners, contractors, must develop, implement, and maintain written procedures to require that:

a. All records containing personally identifying information of any individual or family who applies for and/or receives HOME-ARP assistance will be kept secure and confidential;

b. The address or location of any NCS or HOME-ARP rental housing exclusively for individuals fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be made public, except as necessary where making the address or location public does not identify occupancy of the NCS or HOME-ARP rental housing, when necessary to record use restrictions or restrictive covenants in accordance with Section VI.B or VI.E, or with written authorization of the person or entity responsible for the operation of the NCS or HOME-ARP rental housing; and

c. The address or location of any program participant that is a fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be made public, except as provided under a privacy policy of the participating jurisdiction consistent with state and local laws and any other grant conditions from other federal grant programs regarding privacy and obligations of confidentiality.

Documenting status of a qualifying population that is fleeing or attempting to flee domestic violence, dating violence, stalking, sexual assault, or human trafficking:

i. If an individual or family qualifies because the individual or family is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking then acceptable evidence includes an oral or written statement by the qualifying individual or head of household seeking assistance that they are fleeing that situation. An oral statement may be documented by either: A written certification by the individual or head of household; or a written certification by a victim service provider, intake worker, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or an intake worker in any other organization from whom the individual or family sought assistance.

The written documentation need only include the minimum amount of information indicating that the individual or family is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking and need not include any additional details about the conditions that prompted the individual or family to seek assistance.

All entities assisted by HOME-ARP funds must develop, implement, and maintain written procedures to require that:

a. All records containing personally identifying information of any individual or family who applies for and/or receives HOME-ARP assistance will be kept secure and confidential;

b. The address or location of any NCS or HOME-ARP rental housing exclusively for individuals fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be made public, except as necessary where making the address or location public does not identify occupancy of the NCS or HOME-ARP rental housing, when necessary to record use restrictions or restrictive covenants in accordance with Section VI.B or VI.E, or with written authorization of the person or entity responsible for the operation of the NCS or HOME-ARP rental housing; and

c. The address or location of any program participant that is a fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be made public, except as provided under a privacy policy of the participating jurisdiction consistent with state and local laws and any other grant conditions from other federal grant programs regarding privacy and obligations of confidentiality.

Documenting status of a qualifying population that is fleeing or attempting to flee domestic violence, dating violence, stalking, sexual assault, or human trafficking:

a. If an individual or family qualifies because the individual or family is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human

trafficking then acceptable evidence includes an oral or written statement by the qualifying individual or head of household seeking assistance that they are fleeing that situation. An oral statement may be documented by either:

i. A written certification by the individual or head of household; or

ii. a written certification by a victim service provider, intake worker, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or an intake worker in any other organization from whom the individual or family sought assistance.

The written documentation need only include the minimum amount of information indicating that the individual or family is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking and need not include any additional details about the conditions that prompted the individual or family to seek assistance.

8. *Recordkeeping.* Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of the HOME-ARP Notice. The recordkeeping requirements in 24 CFR 92.508 apply to HOME-ARP, except § 92.508(a)(2) for program records, (a)(3) for project records, (a)(4) for financial records, and § 92.508(c) for period of record retention are waived and HUD imposes the following alternative requirements for program, project, financial, and period of record retention:

(1) *Program Records:*

a. Records evidencing that all HOME-ARP funds used by a participating jurisdiction for TBRA, supportive services, and acquisition and development of non-congregate shelter units benefit individuals and families in qualifying populations.

b. Records evidencing that not less than 90 percent of affordable rental housing units acquired, rehabilitated, and/or constructed with HOME funds by a participating jurisdiction are occupied by households in the qualifying populations.

c. Records documenting compliance with the 15 percent limitation on administrative and planning costs.

d. Records documenting compliance with the 5 percent limitation on CHDO and non-profit operating and capacity building costs.

e. The underwriting and subsidy layering guidelines adopted in accordance with Section VI.B.10 of the HOME-ARP Notice that support the participating jurisdiction's HOME-ARP allocation plan certification.

f. If existing debt is refinanced for multifamily rehabilitation projects, the HOME-ARP refinancing guidelines established in the HOME-ARP Allocation Plan.

g. If HOME-ARP funds are used for TBRA, records supporting the participating jurisdiction's written selection policies and criteria; supporting documentation for preferences for specific categories of individuals with disabilities; and records supporting the rent standard and minimum tenant contribution established in accordance with Section VI.C.7 and 8 of the HOME-ARP Notice.

h. Confidentiality.

i. The participating jurisdiction's written policies and procedures for maintaining confidentiality of qualifying households as individuals or families fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking in accordance with Section VIII.H

ii. The participating jurisdiction's written policies and procedures for maintaining confidentiality in compliance with the VAWA protections contained in 24 CFR part 5, subpart L.

(2) *Project Records:* Participating jurisdictions are required to retain the following records for HOME-ARP-assisted projects, as specified by activity type.

a. A full description of each project assisted with HOME-ARP funds, including the location (address of project), form of HOME-ARP assistance, and the units, families, or qualifying households assisted with HOME-ARP funds, subject to the confidentiality requirements in the HOME-ARP Notice.

b. The source and application of funds for each project, including supporting documentation in accordance with 2 CFR 200.302; and records to document the eligibility and permissibility of the project costs, including the documentation of the actual HOME-ARP-eligible development costs of each HOME-ARP-assisted unit as defined in the HOME-ARP Notice.

c. Records (*i.e.,* written agreements) demonstrating compliance with the written agreement requirements in Section VIII.B. of the HOME-ARP Notice.

d. Records (*e.g.,* inspection reports) demonstrating that each HOME-ARP rental project meets the property standards in Section VI.B.11 of the HOME-ARP Notice at project completion and through the applicable minimum compliance period. In addition, during a HOME-ARP rental project's minimum compliance period, records demonstrating compliance with the property standards and financial oversight pursuant to 24 CFR 92.504(d) and the operating cost assistance reserve management and oversight required by Section VI.B.22 of the HOME-ARP Notice.

e. Records (*e.g.,* inspection reports) demonstrating that each unit occupied by a qualifying household receiving HOME-ARP TBRA, meets the housing quality standards of Section VI.C.9 of the HOME-ARP Notice at initial occupancy and throughout the household's term of assistance.

f. Records (*e.g.,* inspection reports) demonstrating that each NCS project meets the property and habitability standards of SectionVI.E.7., of the HOME-ARP Notice at project completion and throughout the applicable restricted use period.

g. Records demonstrating that each qualifying household is eligible for HOME-ARP assistance based on the requirements of the ARP and Section IV of the HOME-ARP Notice.

h. Records demonstrating that each household qualifying as homeless, records that meet the requirements in 24 CFR 576.500(b)(1), (2), (3), or (4), as applicable (except that youth aged 24 and under must not be required to provide third-party documentation to show they are homeless to receive any shelter, housing, or services for which ESG or CoC Program funds may be used to supplement the HOME-ARP assistance);

i. Records demonstrating that each household qualifying as ''at risk of homelessness,'' records that meet the requirements in 24 CFR 576.500(c)(1) or (2), as applicable, and include the following documentation of annual income:

(i) Income evaluation form containing the minimum requirements specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents for the assets held by the household and income received over the most recent period for which representative data is available before the date of the evaluation (*e.g.,* wage statement, unemployment compensation statement, public benefits statement, bank statement);

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.,* employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the household received over the most recent period for which representative data is available; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the household of the amount of income the household received for the most recent period representative of the income that the household is reasonably expected to receive over the 3-month period following the evaluation.

j. Records demonstrating compliance with the household income requirements in accordance with Section VI.B.12 of the HOME-ARP Notice for each HOME-ARP rental project.

k. Records demonstrating that each HOME-ARP rental and NCS project meets the minimum compliance period or restricted use period described in Sections VI.B.17 and VI.E.9 respectively, of the HOME-ARP Notice.

l. Records demonstrating that for each HOME-ARP rental housing unit or for each household receiving HOME-ARP TBRA, compliance with the tenant protection requirements of Sections VI.B.18 and VI.C. 2, respectively, of the HOME-ARP Notice. For HOME-ARP TBRA or rental projects under a master lease, the participating jurisdiction must retain records demonstrating that a master lease for housing leased by a HOME-ARP sponsor and each sublease between a qualifying household and HOME-ARP sponsor complies with the tenant and participant protections of 24 CFR 92.253 and the HOME-ARP Notice. Records must be kept for each household.

m. Records demonstrating compliance with the return of the HOME-ARP rental capitalized operating cost assistance reserve and/or the NCS replacement reserve at the end of the compliance or restricted use period in accordance with Sections VI.B.23

and VI.E.10 respectively, of the HOME-ARP Notice.

n. Records demonstrating that each HOME-ARP rental and each NCS project meets the underwriting and subsidy layering or due diligence requirements of Section VI.B.10 or VI.E.6 of the HOME-ARP Notice.

o. Records demonstrating that each HOME-ARP rental housing project meets the rent limitations of Sections VI.B.13 and VI.B.15 of the HOME-ARP Notice for the 15-year minimum compliance period. Records must be kept for each household assisted.

p. Records demonstrating that each multifamily HOME-ARP rental housing project involving rehabilitation with refinancing complies with the refinancing guidelines established in accordance with 24 CFR 92.206(b).

q. Records demonstrating that a site and neighborhood standards review was conducted for each HOME-ARP rental housing project involving new construction under Section VI.B. of the HOME-ARP Notice to determine that the site meets the requirements of 24 CFR 983.57(e)(2) and (e)(3), in accordance with 24 CFR 92.202.

r. Records demonstrating that any conversion of HOME-ARP NCS complies with the requirements established by Section VI.E. of the HOME-ARP Notice, including that conversion of NCS only occurred after the end of the applicable minimum use period defined in Section VI.E.11.

s. For all HOME-ARP NCS projects the following documents must be maintained, as applicable:

(i) Purchase contract, closing documents, settlement statement and title work for acquisitions.

(ii) Appraisal or other estimation of value to justify acquisition expenditure.

(iii) Architectural and engineering contracts and completed designs, plans, and specifications for rehabilitation and new construction activities.

(iv) Invoices, pay requests, and proof of payment for all project expenditures.

(v) Proof of insurance.

(vi) Project and program audits.

t. For all HOME-ARP Supportive Services projects pursuant to McKinney-Vento or Homelessness Prevention Supportive Services:

(i) Records demonstrating which types of Supportive Services the participating jurisdiction is offering program participants.

(ii) Records, where applicable, demonstrating compliance with the termination of assistance requirement as described in section VI.D.5. of the HOME-ARP Notice.

(iii) Records of all solicitations of and agreements with subrecipients and contractors, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable including any findings and corrective actions required.

(iv) Records of all procurement contracts and documentation of compliance with the procurement requirements in 2 CFR part 200, subpart D, and Section VIII.D of the HOME-ARP Notice.

(v) Records evidencing the use of the written procedures required under Section VI.D.2 and records evidencing compliance with Section IV.C.2.

(vi) Records of all leases, subleases, and financial assistance agreements for the provision of rental payments, documentation of payments made by the participating jurisdiction to owners, HOME-ARP sponsor, or qualifying households for the provision of financial assistance for rental payments, and supporting documentation for these payments, including dates of occupancy by qualifying individuals and families.

(vii) Records that document the monthly allowance for utilities (excluding telephone) used to determine compliance with the rent restriction.

(viii) Records of the types of services provided under the participating jurisdiction's program and the amounts spent on these services.

(ix) Records demonstrating subrecipient compliance with the recordkeeping requirements in Section VIII.F. of the HOME-ARP Notice.

u. For all HOME-ARP Housing Counseling Services projects as defined in 24 CFR part 5, each participating housing counseling agency must maintain a recordkeeping and reporting system in accordance with 24 CFR 214.315 and 24 CFR 214.317. The system must permit HUD to easily access all information needed for a performance review.

v. For all HOME-ARP-assisted nonprofit operating expense and capacity building assistance activities:

(i) Records concerning the use of funds for nonprofit operating expense and capacity building assistance must be maintained to enable HUD to determine whether the participating jurisdiction has met the requirements of Section VI.F. of the HOME-ARP Notice.

(ii) Written agreements between the participating jurisdiction and the nonprofit organization providing nonprofit operating expense assistance or capacity building assistance must be retained for five years after the agreement terminates.

(3) *Financial records:*

a. Records, in accordance with 2 CFR 200.302, identifying the source and application of HOME-ARP funds. Identification must include, as applicable, the Assistance Listing program title and number (formerly Catalogue of Federal Domestic Assistance), Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

b. Records concerning the HOME Investment Trust Fund Treasury account and local account required to be established and maintained by the HOME-ARP Notice, including deposits, disbursements, balances, supporting documentation and any other information required by IDIS.

c. Records identifying the source and application of program income and repayments.

d. Records demonstrating adequate budget control and other records required by 2 CFR 200.302, including evidence of periodic account reconciliations.

(4) *Program administration records:*

a. Records demonstrating compliance with the written agreements required by Section VIII.B. of the HOME-ARP Notice.

b. Records demonstrating compliance with the applicable uniform administrative requirements required by Section VIII.D. of the HOME-ARP Notice.

c. Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

(5) *Records concerning other Federal requirements:*

a. Equal opportunity and fair housing records.

(i) Data on the extent to which each racial and ethnic group, and single-headed households by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME-ARP funds.

(ii) Documentation that the participating jurisdiction submitted a certification that it will affirmatively further fair housing consistent with 24 CFR 5.152 (HUD's Interim Final Rule entitled ''*Restoring Affirmatively Furthering Fair Housing Definitions and Certifications,*'' (86 FR 30779, June 10, 2021), as amended established the AFFH definition, codified at 24 CFR 5.151 and the AFFH certification, codified at 24 CFR 5.152, available at: *https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications*)

(iii) Records demonstrating compliance with the nondiscrimination and equal opportunity requirements of 24 CFR 92, Subpart H.

b. Affirmative marketing and MBE/WBE records.

(i) Records demonstrating compliance with the affirmative marketing procedures and requirements of 24 CFR 92.351.

(ii) Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with HOME-ARP funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

c. Records demonstrating compliance with the environmental review requirements of 24 CFR 92.352, 24 CFR part 58, and the HOME-ARP Notice including flood insurance requirements.

d. Records demonstrating compliance with the requirements of 24 CFR 92.353 and the provisions of Section VII.F. of the HOME-ARP Notice regarding displacement, relocation, and real property acquisition, including but not limited to:

(i) project occupancy lists identifying the name and address of all persons occupying the real property on the date described in 24 CFR 92.353(c)(2)(i)(A), moving into the

property on or after the date described in 24 CFR 92.353(c)(2)(i)(A), and occupying the property upon completion of the project;

(ii) Lists of all individuals or families occupying hotels and motels and other nonresidential properties acquired, rehabilitated, and/or demolished and newly constructed to become HOME-ARP NCS or HOME-ARP rental housing that qualify for assistance under the HOME-ARP Notice as members of a qualifying population, as well as records indicating whether such persons were assisted by the HOME-ARP program by the participating jurisdiction following the closure of the nonresidential properties because of HOME-ARP activities;

(iii) Lists of all individuals or families occupying HOME-ARP NCS that were converted during the required use period that qualify for assistance under the HOME-ARP Notice, as well as records indicating whether moving costs or advisory services were provided as part of HOME-ARP administrative costs or under the HOME-ARP supportive services activity in Section VI.D of the HOME-ARP Notice, and records indicating whether such persons were assisted by the HOME-ARP program by the participating jurisdiction following the conversion of the HOME-ARP NCS units.

(iv) Documentation that the participating jurisdiction has and followed a RARAP in accordance with 24 CFR 92.353 and 24 CFR 42.325.

e. Records demonstrating compliance with the labor requirements of 24 CFR 92.354, including contract provisions and payroll records.

f. Records demonstrating compliance with the lead-based paint requirements of 24 CFR part 35, subparts A, B, J, K, M and R, as applicable.

g. Records supporting compliance with conflict of interest requirements in 24 CFR 92.356, as revised by Section VII.H. of the HOME-ARP Notice, as well as documentation of any exceptions granted by HUD or a state participating jurisdiction, as applicable, to the conflict of interest provisions in 24 CFR 92.356, as revised by Section VII.H. of the HOME-ARP Notice.

h. Records demonstrating compliance with debarment and suspension requirements in 2 CFR part 2424.

i. Records concerning intergovernmental review, as required by 24 CFR 92.357.

j. Records of emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 92.359 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests.

k. Documentation of actions undertaken to meet the requirements of 24 CFR part 75 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(6) *State Recipients and Subrecipients:* A participating jurisdiction that distributes HOME-ARP funds to State recipients or subrecipients must require the State recipients or subrecipients to keep the records required by paragraphs 1. program records, 2. project records, 3. financial records, 4. program administration records, and 5. records concerning other federal requirements of this Section of the Notice, and such other records as the participating jurisdiction determines to be necessary to enable the participating jurisdiction to carry out its responsibilities under the HOME-ARP Notice. The participating jurisdiction need not duplicate the records kept by the State recipients or subrecipients. The participating jurisdiction must keep records concerning its annual review of the performance and compliance of each State recipient and subrecipient as required under 24 CFR 92.504(a).

(7) *Period of record retention:* All records pertaining to HOME-ARP funds must be retained for five years, except as provided below.

a. For rental housing projects, records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.

b. For HOME-ARP TBRA projects, records must be retained for five years after the period of rental assistance terminates.

c. Written agreements must be retained for five years after the agreement terminates.

d. Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with 24 CFR 92.353.

e. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

(8) *Access to records:* The participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws and any other applicable grant conditions from other federal grant programs regarding privacy and obligations of confidentiality.

The participating jurisdiction, subrecipient, contractor, or owner may create a program participant identifier code or number that can be used on a file and maintained internally, in such a way that the number itself does not inadvertently identify the program participant, (*i.e.* no use of initials, date of birth, or other pieces of information that might suggest who the program participant is.) The ''key'' or ''cypher'' for the program participant identifier code would itself be confidential and would not leave the provider. In the circumstance of HUD programs, the Unique Personal Identification Number which is generated within the comparable database could be used with auditors to identify records of services to distinct individuals, subject to the below requirement.

HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the participating jurisdiction, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts. If a provider of services or operator of an NCS is subject to state or local laws or other federal grant programs that require that HUD not be given access to records detailing PII of victims, then auditors or evaluators may be given access to representative files without any sharing of individual identifying information.

(9) *Performance reports.* Requirements in 24 CFR 92.509 are waived and HUD imposes the requirements in the Reporting and Performance Reports section in the HOME-ARP Notice as an alternative requirement.

The participating jurisdiction must submit reports in a format and at such time as prescribed by HUD. In addition, HUD and Office of the Inspector General (OIG) staff must be given access, upon reasonable notice, to all information related to the selection, award, and use of HOME-ARP funds.

Each participating jurisdiction must enter the required HOME-ARP data elements timely in IDIS.

1. For HOME-ARP rental activities, the participating jurisdiction must enter complete project completion information when it completes the activity in IDIS, except the assisted units can be marked vacant until they are occupied by eligible households.

2. For HOME-ARP NCS activities, the participating jurisdiction must enter complete project completion information when it completes the activity in IDIS. In addition, the participating jurisdiction must report the disposition of any HOME-ARP-assisted NCS activity that is converted to another eligible use at the time of conversion.

3. For HOME-ARP TBRA activities, the participating jurisdiction reports beneficiary information in IDIS at the time assistance is provided.

4. For HOME-ARP Supportive Services activities, the participating jurisdiction must report in IDIS quarterly, by the 30th day after the end of each calendar quarter, on the number of homeless and not homeless households assisted with supportive services and, housing counseling, and/or homelessness prevention including the race and ethnicity, household size, and household type of the households assisted.

HUD will issue guidance about reporting on HOME-ARP activities in the participating jurisdiction's consolidated annual performance and evaluation report (CAPER) required under 24 CFR 91.520, at a later date.

**L. Subpart L—Performance Reviews and Sanctions**

1. *Performance reviews.* HUD waives 24 CFR 92.550 and imposes the following alternative requirements:

HUD will review the performance of each participating jurisdiction in carrying out its responsibilities for the use of HOME-ARP funds and its compliance with the requirements of the HOME-ARP Notice. Such reviews may take the form of remote or on-site monitoring, review of IDIS data or reports, assessment of documents requested from the participating jurisdiction, subrecipient, or other entity carrying out

HOME-ARP activities, and inquiries resulting from external audit reports, media reports, citizen complaints, or other sources of relevant information.

HUD may also review a participating jurisdiction's timely use of HOME-ARP funds for eligible activities, including the progress of expenditures for individual projects or activities, the requirement to place a project in service in accordance with requirements in the HOME-ARP Notice, and compliance of HOME-ARP rental housing and NCS with the 4-year deadline for completing projects.

If HUD preliminarily determines that a participating jurisdiction has not met a requirement of the HOME-ARP Notice or an applicable requirement of the HOME regulations at 24 CFR part 92, HUD will communicate its determination in writing and provide the participating jurisdiction with the opportunity to demonstrate, based on substantial facts, documentation, and data, that it has done so. HUD may extend any time period it provided to the participating jurisdiction to demonstrate its compliance if upon request of the participating jurisdiction, HUD determines that it is infeasible for the participating jurisdiction to provide a full response within the prescribed period.

If the participating jurisdiction fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or 24 CFR 92.552.

2. *Corrective and remedial actions.* HUD waives 24 CFR 92.551 and imposes the following alternative requirements:

Corrective or remedial actions for a performance deficiency (*e.g.,* failure to meet a provision of the HOME-ARP Notice or an applicable provision of 24 CFR part 92) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence. HUD may impose corrective or remedial actions including but not limited to the following:

1. HUD may instruct the participating jurisdiction to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:

a. Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

b. Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

c. Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME-ARP funds for the activities;

d. Reprogramming HOME-ARP funds that have not yet been expended from affected activities to other eligible activities;

e. Reimbursing its HOME-ARP grant in any amount not used in accordance with the requirements of the HOME-ARP Notice;

f. Suspending disbursement of HOME-ARP funds for affected activities; and

g. Establishing procedures to ensure compliance with HOME-ARP requirements.

2. HUD may also:

a. Change the method of payment from an advance to a reimbursement basis and may require supporting documentation to be submitted for HUD review for each payment request before payment is made;

b. Determine the participating jurisdiction to be high risk and impose special conditions or restrictions on the use of HOME-ARP funds in accordance with 2 CFR 200.208; and

c. Take other remedies that may be legally available, including remedies under 2 CFR 200.339 and 200.340.

3. The requirements in 24 CFR 92.551(c)(2) are also revised to the updated regulatory references to 2 CFR part 200, as amended, that have been renumbered.

**M. Consolidated Submissions for Community Planning and Development Programs (24 CFR PART 91)**

1. *Consultation requirements for HOME-ARP allocation plan.* 24 CFR 91.100 and 24 CFR 91.110 are waived and the following alternative requirements shall apply to HOME-ARP allocation plan submissions.

(1) Before developing its HOME-ARP allocation plan, a participating jurisdiction must consult with agencies and service providers whose clientele include the HOME-ARP qualifying populations to identify unmet needs and gaps in housing or service delivery systems. In addition, a participating jurisdiction should use consultation to determine the HOME-ARP eligible activities currently taking place within its jurisdiction and potential collaborations for administering HOME-ARP. This consultation will provide a basis for the participating jurisdiction's strategy for distributing HOME-ARP funds for eligible activities to best meet the needs of qualifying populations.

(2) At a minimum, a participating jurisdiction must consult with the CoC(s) serving the jurisdiction's geographic area, homeless and domestic violence service providers, public housing agencies (PHAs), public agencies that address the needs of the qualifying populations, and public or private organizations that address fair housing, civil rights, and the needs of persons with disabilities. State participating jurisdictions are not required to consult with every PHA or CoC within the state's boundaries; however, local participating jurisdictions must consult with all PHAs and CoCs within the jurisdiction's boundaries. In its plan, a participating jurisdiction must describe its consultation process, list the organizations consulted, and summarize the feedback received from these entities.

2. *Public participation requirements for HOME-ARP allocation plan.* Section 105 of NAHA (42 U.S.C. 12705), section 107 of NAHA (42 U.S.C. 12707), 24 CFR 91.105, 24 CFR 91.115, and 24 CFR 91.401 are waived and the following alternative requirements shall apply to HOME-ARP allocation plan submissions by participating jurisdictions.

(1) Participating jurisdictions must provide for and encourage citizen participation in the development of the HOME-ARP allocation plan. Before submitting the HOME-ARP allocation plan to HUD, participating jurisdictions must provide residents with reasonable notice and an opportunity to comment on the proposed HOME-ARP allocation plan of no less than 15 calendar days. The participating jurisdiction must follow its adopted requirements for ''reasonable notice and an opportunity to comment'' for plan amendments in its current citizen participation plan except for where it conflicts with the requirements of the HOME-ARP Notice, including the Appendix in this notice. In addition, participating jurisdictions must hold at least one public hearing during the development of the HOME-ARP allocation plan prior to submitting the plan to HUD.

(2) For the purposes of HOME-ARP, participating jurisdictions are required to make the following information available to the public:

a. The amount of HOME-ARP funds the participating jurisdiction will receive, and

b. The range of activities the participating jurisdiction may undertake.

(3) A participating jurisdiction must consider any comments or views of residents received in writing, or orally at a public hearing, when preparing the HOME-ARP allocation plan. In its plan, a participating jurisdiction must describe its public participation process, including any efforts made to broaden public participation and summarize the comments or views received. In its plan, the participating jurisdiction must also include a summary of comments received through the public participation process and any comments or views not accepted and the reasons why.

(4) Throughout the HOME-ARP allocation plan public participation process, the participating jurisdiction must follow its applicable requirements and procedures for effective communication, accessibility, and reasonable accommodation for persons with disabilities and providing meaningful access to participation by limited English proficient (LEP) residents that are in its current citizen participation plan.

3. *Alternative requirement to the Contents of the Consolidated Plan for Local Governments, States, Consortia, and Insular Areas.* The requirements of section 105(a), (b), (d)–(g) of NAHA (42 U.S.C. 12705(a), (b), (d)–(g)), section 107 of NAHA (42 U.S.C. 12707), 24 CFR part 91, subparts C and D are waived for HOME-ARP allocation plan submissions except to the extent that such provisions allow for the submission of the HOME-ARP allocation plan as part of a participating jurisdiction's annual action plan submission for Fiscal Year 2021. 24 CFR 91.505 is also waived. 24 CFR 91.500 shall apply except as modified by alternative requirements stated below. The following alternative requirements shall apply to the contents, submission, and review of the HOME-ARP allocation plan.

*(1) General Requirement.* The HOME-ARP allocation plan must describe the distribution of HOME-ARP funds and the process for soliciting applications and/or selecting eligible projects. The plan must also identify any preferences being established for eligible activities or projects. However, participating jurisdictions are not required to identify specific projects that will be funded in the HOME-ARP allocation plan.

*(2) Needs Assessment and Gaps Analysis.* A participating jurisdiction must evaluate the

size and demographic composition of qualifying populations within its boundaries and assess the unmet needs of those populations. In addition, a participating jurisdiction must identify any gaps within its current shelter and housing inventory as well as the service delivery system. A participating jurisdiction should use current data including point in time count, housing inventory count, or other data available through CoCs, and consultations with service providers to quantify the individuals and families in the qualifying populations and their need for additional housing, shelter, or services. A participating jurisdiction should identify and consider the current resources available to assist qualifying populations, including congregate and non-congregate shelter units, supportive services, TBRA, and affordable and permanent supportive rental housing. A participating jurisdiction must consider the housing and service needs of qualifying populations, including but not limited to:

1. Sheltered and unsheltered homeless populations;

2. Those currently housed populations at risk of homelessness;

3. Other families requiring services or housing assistance to prevent homelessness; and

4. Those at greatest risk of housing instability or in unstable housing situations.

A participating jurisdiction should include data in its HOME-ARP allocation plan that describes the qualifying populations. In addition, participating jurisdictions must include a narrative description that:

a. Identifies the characteristics of housing associated with instability and an increased risk of homelessness if the participating jurisdiction will include such conditions under HUD's definition of ''other populations'' as established in Section IV.A.2.g. of the HOME-ARP Notice;

b. Identifies the participating jurisdiction's priority needs for qualifying populations; and

c. Explains how the participating jurisdiction determined the level of need and gaps in its shelter and housing inventory and service delivery systems.

*(3) HOME-ARP Activities.* The HOME-ARP allocation plan must describe how a participating jurisdiction will distribute HOME-ARP funds in accordance with its priority needs. The plan must describe the participating jurisdiction's method for soliciting applications for funding and/or selecting developers, service providers and/or subrecipients and whether the participating jurisdiction will administer eligible activities directly. If the participating jurisdiction will provide any portion of its HOME-ARP administrative funds to a subrecipient or contractor prior to HUD's acceptance of the participating jurisdiction's HOME-ARP allocation plan because the subrecipient or contractor is responsible for the administration of the participating jurisdiction's entire HOME-ARP grant, the plan must identify the subrecipient or contractor and describe its role and responsibilities in administering all of the participating jurisdiction's HOME-ARP program.

Participating jurisdictions must indicate in the HOME-ARP allocation plan the amount of HOME-ARP funding that is planned for each eligible HOME-ARP activity type, including administrative and planning activities. In addition, a participating jurisdiction must demonstrate that any planned funding for non-profit operating assistance, as described in Section VI.F of the HOME-ARP Notice, non-profit capacity building, and administrative costs is within statutory limits. A participating jurisdiction must also include a narrative description about how the characteristics of its shelter and housing inventory and service delivery system and the needs identified in the participating jurisdiction's gap analysis provided a rationale for its plan to fund eligible activities.

*(4) HOME-ARP Production Housing Goals.* The HOME-ARP allocation plan must estimate the number of affordable rental housing units for qualifying populations that a participating jurisdiction will produce or support with its HOME-ARP allocation. The plan must also include a narrative about the specific affordable rental housing production goal that the participating jurisdiction hopes to achieve and describe how it will address the participating jurisdiction's priority needs.

*(5) Preferences.* The HOME-ARP allocation plan must identify whether the participating jurisdiction intends to give preference to one or more qualifying populations or a subpopulation within one or more qualifying populations for any eligible activity or project. For example, participating jurisdictions may include a preference for:

a. Homeless individuals and families as defined in the ESG and CoC Programs;

b. Individuals with special needs or persons with disabilities among qualifying individuals and families; or

c. A specific category of qualifying individuals and families (*e.g.,* chronically homeless as defined in 24 CFR 91.5).

Participating jurisdictions are not required to describe specific projects to which the preferences will apply in the HOME-ARP allocation plan. However, a participating jurisdiction must explain how the use of a preference or method of prioritization will address the unmet need or gap in benefits and services received by individuals and families in the qualifying population or category of qualifying population, consistent with participating jurisdiction's needs assessment and gap analysis. The participating jurisdiction must also describe how it will still address the unmet needs or gaps in benefits and services of the other qualifying populations that are not included in a preference through the use of HOME-ARP funds.

Preferences cannot violate any applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in 24 CFR 5.105(a). The participating jurisdiction must comply with all applicable nondiscrimination and equal opportunity laws and requirements listed in 24 CFR 5.105(a) and any other applicable fair housing and civil rights laws and requirements when establishing preferences or methods of prioritization.

*(6) HOME-ARP Refinancing Guidelines.* If a participating jurisdiction intends to use HOME-ARP funds to refinance existing debt secured by multifamily rental housing that is being rehabilitated with HOME-ARP funds, it must state its refinancing guidelines in accordance with 24 CFR 92.206(b)(2). The guidelines must describe the conditions under with the participating jurisdiction will refinance existing debt for a HOME-ARP rental project. At a minimum, the guidelines must:

a. Establish a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing to demonstrate that rehabilitation of HOME-ARP rental housing is the primary eligible activity.

b. Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long-term needs of the project can be met; and that the feasibility of serving qualified populations for the minimum compliance period can be demonstrated.

c. State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both.

d. Specify the required compliance period, whether it is the minimum 15 years or longer.

e. State that HOME-ARP funds cannot be used to refinance multifamily loans made or insured by any federal program, including the Community Development Block Grant program.

*(7) Substantial Amendments to the HOME-ARP Allocation Plan.* Participating jurisdictions must make a substantial amendment to the HOME-ARP allocation plan for changes in the method of distributing funds; to carry out an activity not previously described in the plan; or, to change the purpose, scope, location, or beneficiaries of an activity, including new preferences not previously described in the plan. In addition, the requirements for substantial amendments at 24 CFR 92.63 apply to the HOME-ARP allocation plan for insular areas.

Participating jurisdictions are not required to make a substantial amendment to describe individual projects selected for funding if the eligible activity is included in the participating jurisdiction's plan. Participating jurisdictions must make the proposed substantial amendment public and provide for a 15-day public comment period prior to submission. Upon completion of the public comment period, participating jurisdictions must submit substantial amendments to HUD in accordance with the process for submitting the HOME-ARP allocation plan as described in Section V.D.

*(8) Certifications and SF–424.* Participating jurisdictions must submit the required certifications in accordance with the requirements in the HOME-ARP Notice, including the following:

1. Affirmatively Further Fair Housing;

2. Uniform Relocation Act and Anti-displacement and Relocation Plan;

3. Anti-Lobbying;

4. Authority of Jurisdiction;

5. Section 3; and,

6. HOME-ARP specific certification that a participating jurisdiction will only use

HOME-ARP funds for eligible activities and eligible costs.

Participating jurisdictions must also submit the SF–424, SF–424B and SF–424D with the HOME-ARP allocation plan.

*(9) HOME-ARP Submission and the eCon Planning Suite.* Upon completion of the HOME-ARP allocation plan, a participating jurisdiction must submit the HOME-ARP allocation plan to HUD. To submit the HOME-ARP allocation plan, participating jurisdictions must follow the process to make an amendment to the Fiscal Year (FY) 2021 annual action plan. Once the FY 2021 annual action plan is reopened, a participating jurisdiction must upload a Microsoft Word or PDF version of the plan as an attachment next to the ''HOME-ARP allocation plan'' option on the AD–26 screen (for participating jurisdictions FY 2021 annual action plan is a Year 2–5 annual action plan) or the AD–25 screen (for participating jurisdictions whose FY 2021 annual action plan is a Year 1 annual action plan that is part of the 2021 consolidated plan), unless instructed by HUD to follow a different submission procedure. Participating jurisdictions are not required to make any other edits to the FY 2021 annual action plan or applicable consolidated plan screens in the eCon Planning Suite. For more information on how to upload an attachment in the eCon Planning Suite, participating jurisdictions can refer to the eCon Planning Suite Desk Guide.

*(10) HUD Review of the HOME-ARP Allocation Plan.* The participating jurisdiction must submit its HOME-ARP allocation plan to HUD for review in accordance with 24 CFR 91.500, as revised by this alternative requirement. Unless instructed otherwise by HUD, the HOME-ARP allocation plan will be considered received by HUD when the SF–424 is submitted electronically, which means that it is uploaded in the eCon Planning Suite as an attachment on AD–25 or AD–26 screen, as applicable, and the action plan status is changed to ''Submitted for Review.'' HUD will review a participating jurisdiction's HOME-ARP allocation plan to determine that it is:

1. Substantially complete, and

2. Consistent with the purposes of ARP.

HUD may disapprove a participating jurisdiction's HOME-ARP allocation plan in accordance with 24 CFR 91.500(b). HUD may also disapprove a HOME-ARP allocation plan or a portion of a plan if HUD determines that the plan is inconsistent with the purposes of ARP or substantially incomplete. A participating jurisdiction's plan is inconsistent with ARP if it includes allocates HOME-ARP funds for uses other than a HOME-ARP eligible activity, as described in the HOME-ARP Notice. A participating jurisdiction's plan is substantially incomplete if:

a. The participating jurisdiction does not complete the required public participation or consultation or fails to describe those efforts in the plan;

b. The participating jurisdiction fails to include the required elements outlined in the HOME-ARP Notice, including the amount of HOME-ARP funds for each eligible HOME-ARP activity type;

c. The participating jurisdiction fails to identify and describe the responsibilities of the subrecipient or contractor administering all of its HOME-ARP award, if applicable; or,

d. HUD rejects the participating jurisdiction's HOME-ARP certification as inaccurate.

In accordance with Section 105(c) of NAHA (42 U.S.C. 12705(c)) and 24 CFR 91.500(a), if the participating jurisdiction's HOME-ARP allocation plan is not disapproved within 45 days, then the plan is deemed approved 45 days after HUD receives the plan, and HUD shall notify the participating jurisdiction that the plan is accepted.

*(11) Plan Disapproval.* If HUD determines that the plan is substantially incomplete or that the plan is inconsistent with ARP, HUD will notify the participating jurisdiction in writing with the reasons for disapproval, in accordance with 24 CFR 91.500(c). If a participating jurisdiction's plan is disapproved, the participating jurisdiction may revise or resubmit the plan for HUD review within 45 days after the first notification of disapproval. HUD will respond to accept or disapprove the resubmitted plan within 30 days of receiving the revisions or resubmission.

*(12) Making the HOME-ARP Allocation Plan Public.* Once HUD notifies a participating jurisdiction that the plan is accepted, the participating jurisdiction must make the final HOME-ARP allocation plan available to the public in accordance with the same requirements in the participating jurisdiction's current citizen participation plan that are followed to make the participating jurisdiction's adopted consolidated plan and substantial amendments available to the public, including the availability of materials in a form accessible to persons with disabilities and translated materials in different languages to accommodate LEP persons, upon request.

4. *Tenant preferences in HOME-ARP.* The requirements of Section 225(d) of NAHA (42 U.S.C. 12755(d)), 24 CFR 91.220(l)(2)(vii), 24 CFR 91.320(k)(2)(vii), 24 CFR 92.209(c), 24 CFR 92.252(k), 24 CFR 92.253(d), and 24 CFR 92.504(c)(3)(iii) shall not apply to HOME-ARP projects where they conflict with the following alternative requirements:

A participating jurisdiction may establish reasonable preferences among the qualifying populations to prioritize applicants for HOME-ARP projects or activities based on the participating jurisdiction's needs and priorities, as described in its HOME-ARP allocation plan.

For example, a participating jurisdiction may set a preference among qualifying individuals and families for a HOME-ARP non-congregate shelter for individuals and families who are homeless; fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking; and veterans and families with a veteran family member that meet the criteria of one of these prior qualifying populations, consistent with its HOME-ARP allocation plan.

The participating jurisdiction must comply with all applicable nondiscrimination and equal opportunity laws and requirements listed in 24 CFR 5.105(a) and any other applicable fair housing and civil rights laws and requirements when applying preferences through its referral methods. Persons who are eligible for a preference must have the opportunity to participate in all HOME-ARP activities of the participating jurisdiction in which they are eligible under the HOME-ARP Notice, including activities that are not separate or different, and cannot be excluded because of any protected characteristics or preferential status.

*Targeted assistance:* If HOME-ARP funds are used for TBRA, the participating jurisdiction may establish a preference for individuals with special needs or persons with disabilities among the HOME-ARP qualifying populations. Within the qualifying populations, participation may be limited to persons with a specific disability, if necessary, to provide effective housing, aid, benefit, or services as those provided to others in accordance with 24 CFR 8.4(b)(1)(iv). The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (*e.g.,* persons with HIV/AIDS or chronic mental illness) within the qualifying populations if the specific category is identified in the participating jurisdiction's HOME-ARP allocation plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

5. *Referral Methods for Projects or Activities.* A participating jurisdiction may use the referral methods described below to administer HOME-ARP assistance to qualifying individuals and families. Regardless of the referral method used by the participating jurisdiction, HUD holds the participating jurisdiction responsible for determining and documenting that beneficiaries meet the definition of a qualifying population or, for the portion of HOME-ARP rental units not restricted to qualifying populations, that beneficiaries are low-income.

A participating jurisdiction may use the CE of a CoC for referrals for projects and activities as described below. Under 24 CFR 578.3, a CE is a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals within a defined area. HUD requires each CoC to establish and operate a CE with the goal of increasing the efficiency of local crisis response systems and improving fairness and ease of access to resources, including mainstream resources.

A participating jurisdiction may permit a CoC CE to collect information and documentation required to determine whether an individual or family meets the criteria of a HOME-ARP qualifying population at any point in the CE process, (*i.e.,* after or concurrently with the assessment and intake processes) as long as that information is not used to rank a person for HOME-ARP assistance other than as specified by the preferences or method of prioritization established by the participating jurisdiction, in accordance with HOME-ARP requirements. If the participating jurisdiction uses CE, the participating jurisdiction cannot

require HOME-ARP victim service providers to use the CE but may permit them to do so.

*(1) Use of Expanded CE in HOME-ARP.*

Under this referral method, a participating jurisdiction may use a CE established by a CoC operating within its boundaries for one or more projects or activities if the CE accepts all HOME-ARP qualifying populations eligible for those activities or projects, in accordance with the preferences and prioritization, if any, established or approved by the participating jurisdiction in its HOME-ARP allocation plan and imposed through the participating jurisdiction's written agreements.

Before using a CoC's CE, participating jurisdictions should consider whether the CE covers the same service area as the HOME-ARP projects or activities that would use that CE. At a minimum, the participating jurisdiction must establish policies and procedures that describe the relationship of the geographic area(s) served by the project or activity to the geographic area(s) covered by the CoC CE and address how the CE will provide access and implement uniform referral processes in situations where a project's geographic area(s) is broader than the geographic area(s) covered by the CE.

The participating jurisdiction must require a project or activity to use CE along with other referral methods (as provided in section b below) or to use only a project/activity waiting list (as provided in section c below) if:

i. The CE does not have a sufficient number of qualifying individuals and families to refer to the participating jurisdiction for the project or activity;

ii. The CE does not include all HOME-ARP qualifying populations; or,

iii. The CE fails to provide access and implement uniform referral processes in situations where a project's geographic area(s) is broader than the geographic area(s) covered by the CE.

*(2) Use of CE with Other Referral Methods.* The participating jurisdiction may use a CoC CE with additional referrals from outside organizations or project-specific waiting lists consistent with HOME-ARP requirements. If using this referral method, the participating jurisdiction must establish or approve any preferences or prioritization criteria applied by a CoC CE or other referral sources. The participating jurisdiction may also use a waiting list to receive referrals from a CoC CE and other referral agencies for a project or activity, where a CoC CE or referral agency refers an applicant that is placed on the waiting list in chronological order.

If applicable, a participating jurisdiction must establish policies and procedures for applying a participating jurisdiction's established preferences and method of prioritization, if any, when accepting direct referrals from a CoC CE and other referral agencies, and must document that such the policies and procedures were followed for each applicant served.

*(3) Use of a Project/Activity Waiting List.* The participating jurisdiction may establish a waiting list for each HOME-ARP project or activity. All qualifying individuals or families must have access to apply for placement on the waiting list for an activity or project. Qualifying individuals or families on a waiting list must be accepted in accordance with the participating jurisdiction's preferences, if any, consist with the HOME-ARP Notice or, if the participating jurisdiction did not establish preferences, in chronological order, insofar as practicable.

6. *Limiting Eligibility to Subpopulations.* Participating jurisdictions must follow all applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in 24 CFR 5.105(a). This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of Rehabilitation Act, HUD's Equal Access Rule, and the Americans with Disabilities Act, as applicable.

HOME-ARP rental housing or NCS may be limited to a specific subpopulation of a qualifying population identified in Section IV.A. of the HOME-ARP Notice, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (*e.g.,* the housing may be limited to homeless households and at risk of homelessness households, veterans and their families, victims of domestic violence, dating violence, sexual assault, stalking or human trafficking and their families).

Recipients may limit admission to or provide a preference for HOME-ARP rental housing or NCS to households who need the specialized supportive services that are provided (*e.g.,* domestic violence services). However, no otherwise eligible individuals with disabilities or families including an individual with a disability who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

Consistent with the statutory authority under ARP, HOME-ARP NCS may be converted to permanent housing under the CoC program or used as shelters under the ESG program, when all program and fair housing and nondiscrimination requirements are met. As such, HOME-ARP NCS may need to limit eligibility to households that are homeless and/or at risk of homelessness if the shelter will be converted to permanent housing under the CoC program or used as an emergency shelter in the ESG program.

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Part III

## Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedures for Refrigeration Products; Final Rule

**DEPARTMENT OF ENERGY**

**10 CFR Parts 429 and 430**

**[EERE–2017–BT–TP–0004]**

**RIN 1904–AD84**

## Energy Conservation Program: Test Procedures for Refrigeration Products

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** On December 23, 2019, the U.S. Department of Energy (''DOE'') published a notice of proposed rulemaking (''NOPR'') to amend the test procedures for refrigerators, refrigerator-freezers, and freezers, and miscellaneous refrigeration products (collectively ''refrigeration products''). That proposed rulemaking serves as the basis for this final rule. Specifically, the test procedure amendments adopted in this final rule incorporates by reference the most recent version of the referenced industry standard, provide additional specifications regarding test setup and test conduct, and make additional corrections to the test procedures. The amendments also adjust the energy conservation standards for these products to ensure that the change in test methodology does not: Require manufacturers to increase the efficiency of already compliant products in order to meet the current energy conservation standard; or enable products that would not be compliant with the current energy conservation standards to meet the adjusted energy conservation standards.

**DATES:** The effective date of this rule is November 12, 2021. The final rule changes will be mandatory for product testing starting April 11, 2022. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register on November 12, 2021. The incorporation by reference of other material listed in this rule was approved by the Director of the Federal Register on May 21, 2014.

**ADDRESSES:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *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 those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket web page can be found at *https://www.regulations.gov/docket?D=EERE-2017-BT-TP-0004.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** DOE maintains a previously approved incorporation by reference and incorporates by reference the following industry standard into 10 CFR part 430:

AHAM HRF–1–2019, (''HRF–1–2019''), Energy and Internal Volume of Consumer Refrigeration Products, Copyright © 2019.

Copies of HRF–1–2019 can be obtained from the Association of Home Appliance Manufacturers, 1111 19th Street NW, Suite 402, Washington, DC 20036, (202) 872–5955, or go to *https://www.AHAM.org.*

AS/NZS 4474.1:2007, (''AS/NZS 4474.1:2007''), Performance of Household Electrical Appliances—Refrigerating Appliances; Part 1: Energy Consumption and Performance, Second Edition, published August 15, 2007.

Copies of AS/NZS 4474.1:2007 can be obtained from the GPO Box 476, Sydney NSW 2001, (02) 9237–6000 or (12) 0065–4646, or go to *www.standards.org.au/Standards New Zealand,* Level 10 Radio New Zealand House 144 The Terrace Wellington 6001 (Private Bag 2439 Wellington 6020), (04) 498–5990 or (04) 498–5991, or go to *www.standards.co.nz.*

For a further discussion of this standard, see section IV.N.

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## I. Authority and Background

Refrigerators, refrigerator-freezers, and freezers are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(1)) Additionally, under 42 U.S.C. 6292(a)(20), DOE may extend coverage over a particular type of consumer product provided that DOE determines

that classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA, and specified requirements are met. (See 42 U.S.C. 6292(b)(1) and 6295(l)(1)) Consistent with its statutory obligations, DOE established regulatory coverage over miscellaneous refrigeration products (''MREFs'').[1] 81 FR 46768 (July 18, 2016).

DOE's energy conservation standards and test procedures for refrigerators, refrigerator-freezers, freezers, and MREFs are currently prescribed at 10 CFR 430.23(a) and part 430, subpart B, appendix A (''Appendix A'') for refrigerators and refrigerator-freezers; 10 CFR 430.23(b) and 10 CFR part 430, subpart B, appendix B (''Appendix B'') for freezers; and 10 CFR 430.23(ff) and appendix A for MREFs.

The following sections discuss DOE's authority to establish test procedures for refrigerators, refrigerator-freezers, freezers, and MREFs (collectively, ''refrigeration products''), and relevant background information regarding DOE's consideration of test procedures for these products.

*A. Authority*

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [3] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include refrigerators, refrigerator-freezers, and freezers, the subject of this document. (42 U.S.C. 6292(a)(1))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Further, when amending a test procedure, DOE must determine the extent to which, if any, the proposal would alter the measured energy use of a given product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured energy use of a covered product, DOE must also amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure. (42 U.S.C. 6293(e)(2)) In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency, energy use, or water use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products. *Id.*

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*) Any such amendment must consider the most current versions of the International Electrotechnical Commission (''IEC'') Standard 62301 [4] and IEC Standard 62087 [5] as applicable. (42 U.S.C. 6295(gg)(2)(A))

If DOE determines that a test procedure amendment is warranted, it must publish a proposed test procedure and offer the public an opportunity to present oral and written comments on it. (42 U.S.C. 6293(b)(2))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including refrigeration products, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A)) If the Secretary determines, on their own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)). If DOE

[1] A miscellaneous refrigeration product is defined as a consumer refrigeration product other than a refrigerator, refrigerator-freezer, or freezer, which includes coolers and combination cooler refrigeration products. 10 CFR 430.2.

[2] 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).

[3] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[4] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[5] IEC 62087, *Methods of measurement for the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–04).

determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

*B. Background*

As described, DOE's existing test procedure for refrigerators, refrigerator-freezers, and MREFs appears at Appendix A (''Uniform Test Method for Measuring the Energy Consumption of Refrigerators, Refrigerator-Freezers, and Miscellaneous Refrigeration Products''). DOE's existing test procedure for freezers appears at Appendix B (''Uniform Test Method for Measuring the Energy Consumption of Freezers''). These test procedures are the result of numerous evaluations and updates that have occurred since DOE initially established its test procedures for these products in a final rule published in the **Federal Register** on September 14, 1977 (42 FR 46140).[6]

DOE most recently amended the test procedures for refrigerators, refrigerator-freezers, and freezers in a final rule published on April 21, 2014 (the ''April 2014 Final Rule''). 79 FR 22320. The amendments enacted by the April 2014 Final Rule addressed products with multiple compressors and established an alternative method for measuring and calculating energy consumption for refrigerator-freezers and refrigerators with freezer compartments. *Id.* The April 2014 Final Rule also amended certain aspects of the test procedures to improve test accuracy and repeatability. *Id.* To allow additional time to review comments and data received during the comment period extension, DOE did not address automatic icemaking energy use or built-in testing configuration in the April 2014 Final Rule. *Id.*

On July 18, 2016, DOE published a final rule (the ''July 2016 Final Rule'') that established coverage and test procedures for MREFs.[7] 81 FR 46768. Included within this product category are refrigeration products that include one or more compartments that maintain higher temperatures than typical refrigerator compartments, such as wine chillers and beverage coolers. Additionally, the July 2016 Final Rule amended appendices A and B to include provisions for testing MREFs and to improve the clarity of certain existing test requirements, which would apply to all refrigeration products. *Id.*

On June 30, 2017, DOE published a request for information (the ''June 2017 RFI'') to initiate a data collection process to inform DOE's decision on whether to amend its test procedures in Appendices A and B. 82 FR 29780. After reviewing comments received in response to the June 2017 RFI, DOE published a NOPR on December 23, 2019 (the ''December 2019 NOPR''), in which DOE proposed amendments to its test procedures and corresponding amendments to the energy conservation standards for refrigeration products to account for the proposed test procedure amendments. 84 FR 70842. DOE held a public meeting related to this NOPR on January 9, 2020 (the ''December 2019 NOPR public meeting'').

DOE received written comments in response to the December 2019 NOPR and oral comments at the December 2019 NOPR public meeting from the interested parties listed in Table I.1.

TABLE I.1—COMMENTS RECEIVED IN RESPONSE TO DECEMBER 2019 NOPR

| Commenter(s) | Reference in this NOPR | Commenter type |
|---|---|---|
| California Energy Commission | CEC | Regulatory Agency. |
| Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, National Consumer Law Center, National Resources Defense Council. | Joint Commenters | Efficiency Organizations & Consumer Advocates. |
| Northwest Energy Efficiency Alliance | NEEA | Efficiency Organization. |
| California Investor-Owned Utilities (Pacific Gas and Electric Company,[8] San Diego Gas and Electric, Southern California Edison). | CA IOUs | Utilities. |
| Association of Home Appliance Manufacturers | AHAM | Trade Association. |
| Felix Storch, Inc | FSI | Manufacturer. |
| GE Appliances, a Haier Company | GEA | Manufacturer. |
| Liebherr Canada, Ltd | Liebherr | Manufacturer. |
| Samsung Electronics America | Samsung | Manufacturer. |
| Sub Zero Group, Inc | Sub Zero | Manufacturer. |
| Whirlpool Corporation | Whirlpool | Manufacturer. |

**Note:** Comments received not related to the proposals in the December 2019 NOPR will be considered and addressed as appropriate should DOE undertake additional rulemakings.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[9]

## II. Synopsis of the Final Rule

In this final rule, DOE amends appendices A and B, and corresponding sections in 10 CFR part 429, and in 10 CFR 430.23 as follows:

- Incorporates by reference the current revision to the applicable industry standard, AHAM HRF–1–2019, ''Energy and Internal Volume of Consumer Refrigeration Products,'' which includes updates to methods for

[6] A more detailed history of the test procedures is provided at 84 FR 70842, 70844–70845 (December 23, 2019).

[7] As part of the rulemaking process to establish the scope of coverage, definitions, test procedures, and corresponding energy conservation standards for MREFs, DOE established an Appliance Standards and Rulemaking Federal Advisory Committee negotiated rulemaking working group. (*See* 80 FR 17355 (April 1, 2015))

[8] Pacific Gas and Electric Company separately submitted comments (See docket ID number EERE–2017–BT–TP–0004–25) that are identical to those submitted by the CA IOUs (See docket ID number EERE–2017–BT–TP–0004–23). This final rule references only the CA IOUs comment when addressing the comments provided in both documents.

[9] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for consumer refrigeration products. (Docket No. EERE–2017–BT–TP–0004, which is maintained at *https://www.regulations.gov*). The references are arranged as follows: (Commenter name, docket ID number, page of that document). The December 2019 NOPR Public Meeting Transcript is referenced for comments provided during the December 2019 NOPR public meeting.

test setup, sampling intervals, test conditions, and energy consumption calculations;

- Specifies how to determine the top of the unit for the purpose of temperature measurement location;
- Clarifies ambient temperature and gradient requirements;
- Provides additional context regarding product coverage and situations requiring test procedure waivers;
- Reinstates previously omitted optional test method for products with multiple temperature compartments; and
- Updates the references in 10 CFR part 429 and 10 CFR 430.23 to refer to the amended appendices A and B.

The adopted amendments are summarized in Table II.1 compared to the current test procedure as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

| Current DOE test procedure | Amended test procedure | Attribution |
|---|---|---|
| Incorporates by reference (''IBR'') AHAM HRF–1–2008. | Updates IBR to AHAM HRF–1–2019 | Industry test method update. |
| Variation between definitions and corresponding test procedure provisions in industry standard. | Definitions amended and established consistent with test procedure provisions in HRF-1-2019. | IBR of HRF-1-2019. |
| Variation between testing provisions for testing anti-sweat heaters and equations to calculate annual energy use. | Requires only the tests used for calculating annual energy use to be conducted. | IBR of HRF-1-2019. |
| Specifies a temperature measurement interval of 4 minutes or less for most products. | Specifies that the temperature and power supply measurement intervals shall not exceed 1 minute. | IBR of HRF-1-2019; improves representativeness, repeatability, and reproducibility. |
| Does not define the terms ''compartment'' or ''subcompartment''. | Defines terms consistent with HRF–1–2019 | IBR of HRF-1-2019. |
| Does not explicitly specify thermocouple placement in certain product configurations. | Provides additional thermocouple placement specifications. | IBR of HRF-1-2019; improves representativeness, repeatability, and reproducibility. |
| Does not explicitly specify the setup for test chamber floors that have vents for airflow. | Provides consistent specifications for test platform and floor requirements. | IBR of HRF-1-2019. |
| Does not explicitly specify timing of required temperature range conditions. | Specifies that conditions must be maintained for stabilization and test periods. | Improves representativeness, repeatability, and reproducibility. |
| Requires a separate stabilization period and test period when conducting all energy tests. | Allows test period to serve as stabilization period when conducting certain energy tests. | IBR of HRF-1-2019. |
| Stabilization requirements may not be achievable by certain products with irregular compressor cycling or multiple compressors. | Allows measuring average temperatures over multiple compressor cycles or for a given time period to determine stable operation. | IBR of HRF-1-2019; addresses current waiver. |
| Includes energy use adder for automatic icemakers of 84 kWh/yr. | Updates energy use adder for automatic icemakers to 28 kWh/yr. | IBR of HRF-1-2019. |
| Tests connected features the same as certain other customer-accessible features, *i.e.,* set at the lowest energy usage position, except for demand response devices in the as-shipped position. | Tests any connected products with the communication module on but not connected to a network. | IBR of HRF-1-2019. |
| Inadvertently omits optional method for calculating average per-cycle energy consumption of refrigerators and refrigerator-freezers. | Reinstates optional method and makes other non-substantive corrections. | Correction. |

Section III of this document describes the amendments to the current test procedures for Refrigeration products. DOE has determined that the amendment to the icemaking energy use adder would alter the measured efficiency of Refrigeration products and require re-certification solely as a result of DOE's adoption of the amendments to the test procedures. After reviewing comments received in response to the December 2019 NOPR, DOE is not requiring calculations in accordance with this test procedure amendment until the compliance dates of any amended energy conservation standards for these products, which would incorporate the amended automatic icemaker energy consumption. Accordingly, in this final rule DOE is not amending the energy conservation standards for these products based on this test procedure amendment. This amendment is discussed in section III.G of this document.

Additionally, while the amendment to test connected products with the communication module on but not connected to any network could affect the measured energy consumption for certain products, DOE expects that this amendment would typically result in no change to measured energy use ratings. Therefore, DOE is not amending the energy conservation standards for these products based on this test procedure amendment as discussed in section III.H.2 of this document.

Similarly, the amendment revising the ambient temperature measurement locations for products measuring less than 36 inches in height is not expected to result in a change to measured energy use ratings. Therefore, DOE is not amending the energy conservation standards for these products based on this test procedure amendment as discussed in section III.D.5 of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

## III. Discussion

### *A. Scope of Applicability*

The amendments in this final rule apply to products that meet the definition for ''refrigeration product,'' as codified in 10 CFR 430.2. Refrigeration products include refrigerators, refrigerator-freezers, freezers, and MREFs. Refrigeration products generally refer to cabinets used with one or more doors that are capable of maintaining

temperatures colder than the ambient temperature. While these products are typically used for the storage and freezing of food or beverages, the definitions do not require that the products be designed or marketed for that purpose. The definitions require only that the product be capable of maintaining compartment temperatures within certain ranges, regardless of use. (10 CFR 430.2)

As stated, the test procedure for refrigerators, refrigerator-freezers, and MREFs is included in appendix A. The test procedure for consumer freezers is included in appendix B. The amendments in this final rule do not change the scope of applicability of the test procedures for refrigeration products.

*B. Relevant Industry Test Standards*

DOE's test procedures for refrigeration products in Appendices A and B currently incorporate by reference the Association of Home Appliance Manufacturers (''AHAM'') industry standard HRF–1, ''Energy and Internal Volume of Refrigerating Appliances'' (''HRF–1–2008''). DOE references HRF–1–2008 for definitions, installation and operating conditions, temperature measurements, and volume measurements. In August 2016, AHAM released an updated version of the HRF–1 standard, HRF–1–2016.

In the June 2017 RFI, DOE stated that, based on review of HRF–1–2016, the majority of the updates from the 2008 standard were clarifications or other revisions to harmonize with DOE's test procedures. 82 FR 29780, 29785. In the December 2019 NOPR, DOE proposed to incorporate by reference HRF–1–2016 into 10 CFR part 430, subpart A, and reference certain sections of the 2016 standard in appendix A and appendix B. DOE noted that updating the references to HRF–1–2016 would not substantively affect the existing test procedures in appendix A and appendix B. 84 FR 70842, 70847–70848. DOE also noted that AHAM had released a draft of an updated HRF–1 for public review and provided a link to the draft revision. 84 FR 70842, 70847. DOE requested feedback on its proposal and on whether DOE should incorporate an updated version of HRF–1 instead, should one become publicly available. 84 FR 70842, 70848.

In response to the December 2019 NOPR, AHAM supported incorporation by reference in its entirety of the new version of HRF–1, HRF–1–2019, stating that DOE had participated in the development of the standard and that the standard was also available for public review, allowing other stakeholders to provide feedback as well. (AHAM, No. 18, p. 2)

Whirlpool and Liebherr also recommended the incorporation of HRF–1–2019. (Whirlpool, No. 19, p. 1; Liebherr, No. 16, p. 1) Sub Zero commented that HRF–1–2019 is the most up-to-date and effective energy test procedure for household refrigeration equipment and recommended that it be adopted by reference by DOE. (Sub Zero, No. 17, p. 1–2)

DOE is also aware of another international test standard: International Electrotechnical Commission (''IEC'') Standard 62552, ''Household refrigerating appliances—Characteristics and test methods'' (''IEC 62552''). The latest publication of this test standard is IEC 62552:2015, which was published in three parts (IEC 62552–1:2015, IEC 62552–2:2015, and IEC 62552–3:2015) on February 13, 2015.[10] On November 30, 2020 IEC issued an amendment to this test standard, IEC 62552:2015/AMD1:2020.[11]

CEC encouraged DOE to incorporate by reference the three parts of IEC 62552, stating that the standard addresses all types of refrigerators, including those not driven by compressors, and that harmonizing with the international test procedure would reduce net test burden. (CEC, No. 20, p. 4)

Samsung recommended that DOE generally consider adopting global IEC test procedures in residential appliance test procedures in order to reduce regulatory burdens. Samsung referenced what it described as significant progress toward international modernization and harmonization of standards and test procedures in many industries, leading to improvements in efficiency. According to Samsung, DOE's adoption of IEC test procedures would allow companies to design international platforms and configurations for global markets, which Samsung asserted would reduce cost for manufacturers in design and testing and would result in improved efficiencies and broader consumer choices. (Samsung, No. 24, p. 3) The Joint Commenters referenced similar comments that Samsung provided in the December 2019 NOPR Public Meeting and also recommended that DOE evaluate the relevant IEC test procedures. (Joint Commenters, No. 22, p. 2) NEEA also recommended that DOE adopt a version of the IEC test procedure to harmonize refrigerator test procedures worldwide, which NEEA stated would reduce overall test burden on manufacturers. NEEA added that such harmonization would eliminate the need for manufacturers to optimize refrigerator performance to multiple test procedures. (NEEA, No. 26, p. 5)

In response to CEC's comment regarding applicability of IEC 62552 to non-compressor products, DOE's existing test procedure for MREFs in 10 CFR 430.23(ff) and appendix A already accounts for testing non-compressor products. (See 10 CFR 430.23(ff)(8)) Additionally, while HRF–1–2016 specifically limited scope to compressor-driven refrigerators, refrigerator-freezers, wine chillers, and freezers (See section 2 of HRF–1–2016), HRF–1–2019 does not limit scope to compressor products.

DOE recognizes that there may be a potential benefit to harmonizing among international test standards and regulations, including the potential for reduced burden on manufacturers. In the present case, the existing DOE test procedure, which uses an approach consistent with that in HRF–1–2019, has a long history of use in the United States market, is generally understood by industry, and the results are generally understood by consumers. The existing test procedure is also used as the basis for the Environmental Protection Agency's ENERGY STAR eligibility criteria for refrigerators, refrigerator-freezers, and freezers [12] and the Federal Trade Commission's (''FTC'') EnergyGuide labels [13] for these products. DOE also notes that the current approach to the test procedure was generally supported for use by commenters representing manufacturers. (AHAM, No. 18, p. 2; Liebherr, No. 16, p. 1; Sub Zero, No. 17, pp. 1–2; Whirlpool, No. 19, p. 1)

For these reasons, DOE is generally maintaining the existing test approach in this final rule. As discussed in the following sections of this final rule, the test procedure amendments established in this final rule do not represent a significant change from the current test approach and, therefore, result in little or no additional burden on manufacturers. Additionally, DOE has determined that the existing test approach, including the amendments as discussed in this final rule, results in representative measures of energy use and is not unduly burdensome to conduct, as required under EPCA. (42 U.S.C. 6293(b)(3))

[10] Available online from IEC at *https://webstore.iec.ch/.*

[11] Available online from IEC at *https://webstore.iec.ch/.*

[12] See ENERGY STAR's Eligibility Criteria Version 5.0, available at *https://www.energystar.gov/ia/partners/product_specs/program_reqs/Refrigerators_and_Freezers_Program_Requirements_V5.0.pdf.*

[13] See 16 CFR 305.8.

In addition to the comments described earlier in this section, many of the commenters supporting use of the IEC 62552 test method referred to the ambient conditions required in that test standard, including the requirement for testing at two ambient temperatures. As discussed in section III.B.1 of this document, DOE considered harmonizing with IEC 62552's ambient test conditions, including as part of an optional second ambient test condition; however, DOE concluded that the current single-ambient test approach is appropriate for determining representative energy consumption for refrigeration products.

DOE also reviewed the updates included in the latest HRF–1–2019 standard, as discussed in section III.B.2 of this document. Compared to the draft available for public review and referenced in the December 2019 NOPR, the published version of HRF–1–2019 includes only one substantive update, as discussed in section III.F of this final rule. After considering these updates, DOE is incorporating by reference HRF–1–2019 with additional changes as discussed further in this final rule.

1. Ambient Test Conditions

The DOE test procedures in appendices A and B simulate typical room conditions (72 °F (22.2 °C)) with door openings, by testing at 90 °F (32.2 °C) without door openings. 10 CFR 430.23(a)(7), 10 CFR 430.23(b)(7), and 10 CFR 430.23(ff)(7). The test procedures directly measure the energy consumed during steady-state operation and defrosts, if applicable. The additional thermal load and additional energy consumption of the refrigeration system at the elevated ambient temperature, compared to typical operating ambient conditions, represents the increase in energy consumption caused by thermal loads introduced during normal consumer use—*e.g.,* from door openings and the loading of warm items into the refrigerated space. Additionally, the current test procedures incorporate usage adjustment factors to account for differences in these user-related thermal loads for different types of refrigeration products (*i.e.,* chest freezers and MREFs are typically used less frequently than a primary refrigerator-freezer in a household).

DOE has provided principles of interpretation for its test procedures in 10 CFR 430.23(a)(7), 10 CFR 430.23(b)(7), and 10 CFR 430.23(ff)(7) to describe the intent of the test procedures and the requirements regarding component operation in the test condition versus typical room temperature operation. For example, energy consuming components that operate in typical room conditions (including as a result of door openings, or a function of humidity), and that are not excluded by the test procedure, must operate in an equivalent manner during energy testing under the test procedure, or be accounted for by all calculations as provided for in the test procedure. (*See,* for example, 10 CFR 430.23(a)(7)(i))

DOE first adopted the 90 °F ambient test condition in 1977 after conducting a public notice and comment proceeding to discuss the merits of a proposed test procedure that included the possibility of adopting the 90 °F ambient temperature condition or a higher one at 104 °F. (*See* 42 FR 46140, 46142 (September 14, 1977) (rejecting adoption of the 104 °F ambient test condition in favor of 90 °F)) DOE explained the basis for selecting this temperature condition in its proposal leading to that final rule by noting in part that the selected temperature is designed to compensate for door openings when they occur and a correction factor can be applied ''when appropriate.'' 42 FR 21584, 21586 (April 27, 1977). Further, industry's more recent efforts at revising and updating the test procedures for refrigeration have continued to consistently apply the 90 °F ambient condition. The currently incorporated by reference HRF–1–2008, the more recent HRF–1–2016, and most recent HRF–1–2019 all maintain the approach of a 90 °F ambient temperature.

In response to the December 2019 NOPR, DOE received a variety of comments regarding the test method set forth in IEC 62552, in particular with regard to the specification of two ambient test conditions (at approximately 90 °F and 60 °F) [14] by IEC 62552. The IEC 62552 method requires testing at these two ambient conditions with optional additional load processing efficiency tests (to account for a door opening and warm item insertion) and other auxiliary component efficiency tests.[15] The total energy consumption of a product is determined by a regional interpolation function of the 90 °F and 60 °F test results, load processing efficiency results, and auxiliary component efficiency results. The regional interpolation functions are not defined by IEC 62552—individual jurisdictions may adapt these interpolation weighting factors to result in representative household conditions for the specific jurisdiction.

In response to the December 2019 NOPR, AHAM opposed adopting the test method of IEC 62552 in the current DOE test procedure rulemaking. AHAM cited a study conducted in 1991 by Lawrence Berkeley National Laboratory that found agreement between the 90 °F test method required by the DOE test procedure and field use energy consumption.[16] AHAM stated that any effort to consider or adopt IEC 62552, specifically, the two ambient test conditions, would require extensive testing and take time to evaluate, which would be inappropriate at this time given DOE's statutory obligations to publish an amended test procedure. AHAM stated that it continues its efforts to harmonize HRF–1 with IEC 62552 and the DOE test procedures and commented that its task force will consider if any of the elements of the IEC 62552 test method should eventually be incorporated into HRF–1. AHAM supported an incorporation by reference of HRF–1–2019, which AHAM asserted balances representativeness with test burden, while also retaining high repeatability and reproducibility with the single 90 °F closed-door test point. (AHAM, No. 18, pp. 3–4) Sub Zero supported AHAM's comments and added that IEC 62552 over time has adopted more and more of the methods prescribed in HRF–1, and in the future, these test standards may become even more similar. (Sub Zero, No. 17, p. 2) Sub Zero additionally stated that the elevated-ambient, closed-door energy test prescribed in HRF–1–2019 has been shown to be an excellent proxy for determining actual field energy use while providing repeatability and reproducibility without imposing an unreasonable burden to conduct. (Sub Zero, No. 17, p. 1–2)

At the December 2019 NOPR Public Meeting, GEA stated that the 60 °F ambient test point used in IEC 62552 was developed specifically for products which, in low-temperature climates, would activate a heater in order to maintain refrigeration capacity, and that

[14] IEC 62552 specifically requires testing at 16 °C and 32 °C, which correspond to 60.8 °F and 89.6 °F.

[15] IEC 62552–3:2015 specifies closed-door testing at 16 °C and 32 °C and a load processing efficiency test in Annex G to account for door openings and warm item loading, which is also conducted at two ambient conditions. The load processing efficiency test quantifies the additional energy consumed by the product to remove a known amount of energy which is contained in warm water, which is placed into refrigerated compartments in a defined way (with one door opening). Test methods for accounting for the energy use of other auxiliary components (ambient-controlled anti-sweat heaters and tank-type automatic icemakers) are found in Annex F.

[16] Alan Meier and Richard Jansky, Lawrence Berkeley National Laboratory, *Field Performance of Residential Refrigerators: A Comparison with the Laboratory Test* (May 1991).

the 60 °F test is not needed to measure the average energy usage at 72 °F with door openings. GEA stated that applying an additional test point at 60 °F would not only double the testing time, but also would not be as repeatable or reproducible as the single ambient method in HRF–1. GEA further commented that single speed compressors and variable speed compressors alike would benefit from the lower ambient temperature. (GEA, Public Meeting Transcript, No. 11, pp. 54–57)

Several commenters recommended that DOE consider alignment with IEC 62552, stating that there are potential benefits associated with multiple ambient condition tests. The CA IOUs, CEC, NEEA, and the Joint Commenters commented that testing at a single ambient test point cannot differentiate energy-saving design options (*e.g.,* variable speed compressors) present in refrigeration products currently on the market. (CA IOUs, No. 23, p. 1; CEC, No. 20, p. 3; NEEA, No. 26, p. 2; Joint Commenters, No. 22, p. 1) The CA IOUs and CEC also stated that the single condition leads to a focus on insulation rather than refrigeration efficiency. (CA IOUs, No. 23, p. 2; CEC, No. 20, p. 4) The CA IOUs, CEC, NEEA, and the Joint Commenters argued that the elevated ambient temperature does not represent normal use conditions. (CA IOUs, No. 23, p. 2; CEC, No. 20, p. 3; NEEA, No. 26, p. 2; Joint Commenters, No. 22, p. 1) The CA IOUs and CEC raised concerns regarding susceptibility to circumvention, stating that multiple test points discourage test circumvention strategies. (CA IOUs, No. 23, p. 2; CEC, No. 20, p. 4) The CA IOUs and CEC also argued that there is a high testing burden for manufacturers who supply products to international markets if individual jurisdictions each have different single-ambient test points. (CA IOUs, No. 23, p. 2; CEC, No. 20, p. 3) Specifically, the CA IOUs, NEEA, and the Joint Commenters commented that IEC 62552 allows jurisdictions to use the two ambient test points to interpolate to the appropriate regional ambient temperature, thus reducing overall test burden across jurisdictions with different climates. (CA IOUs, No. 23, p. 2; NEEA, No. 26, p. 2; Joint Commenters, No. 22, p. 2)

The Joint Commenters further commented and referred to previous comments on a request for information DOE published regarding the representativeness of DOE's test procedures and average use cycles of covered products.[17] The Joint Commenters stated that some variation in efficiency performance among models would be expected at more representative test conditions. The Joint Commenters stated that because most refrigerators and freezers are not placed in 90 °F rooms, the single elevated ambient test point may not be providing an accurate relative ranking of model efficiencies. Specifically, the Joint Commenters were concerned that two models that have the same energy consumption as measured by the current test procedure could potentially perform significantly differently at more representative conditions, and furthermore, that the current test procedure does not adequately reflect the benefits of variable speed compressors. The Joint Commenters commented that a refrigerator's compressor would cycle more often at an ambient temperature of 72 °F than at 90 °F and therefore, the benefits of variable speed compressors, which can reduce speed to cycle less frequently, would be greater at 72 °F. The Joint Commenters stated that a test procedure that relied on an ambient condition more representative of field conditions would provide more incentive for optimizing designs at these conditions and would supply better information to consumers. The Joint Commenters also mentioned that the load processing efficiency test in IEC 62552, which measures a unit's response to a single door opening and insertion of warm water bottles, can increase representativeness. (Joint Commenters, No. 22, pp. 1–2)

NEEA stated that test data of 100 refrigerators evaluated as part of the IEC 62552 development demonstrates that the ambient temperature has the greatest impact on refrigerator energy consumption, and technologies such as variable speed compressors have an energy savings potential of 10–30% for refrigerator-freezers due to reduced cycling losses from load-matching (*i.e.,* responding to door openings and warm item insertion). NEEA commented that without the addition of a second ambient temperature test in DOE's test procedure, the reduced energy use associated with such energy saving technologies will not be recognized. NEEA stated that the current test procedure may even penalize the rated performance of energy efficient refrigerators in some cases due to rating equipment at near full compressor speed. NEEA also stated that testing at a single elevated ambient temperature with no user interaction does not reflect normal use and does not encourage manufacturers to optimize the performance of their products for a normal use condition. (NEEA, No. 26, p. 2)

NEEA presented data from testing six refrigerators using both the DOE (*i.e.,* high ambient temperature) and IEC 62552 low-temperature ambient conditions. NEEA asserted that the data shows that refrigerators with variable speed compressors showed a relatively smaller increase in energy consumption from the low-temperature test to the high-temperature test. This data is reproduced in Table III.1. Based on this data, NEEA stated that DOE's single ambient test temperature obscures the energy saving benefit of variable speed technologies that would be of most benefit during normal use. (NEEA, No. 26, pp. 1–3)

NEEA referred to the Australian/New Zealand regulatory requirements for refrigerators and freezers (AS/NZS 4474:2018), which incorporate IEC 62552 without modifications but adapt the weighting factors for the 90 °F test result and the 60 °F test result for the purpose of providing a representative local energy use. NEEA stated that the IEC test method is specifically constructed in a manner to allow different countries and regions to add the different components together in a manner and weighting that best reflects local conditions while using only a single suite of test elements that remain harmonized throughout the world, and that weighting factors can be adapted for the typical conditions in the United States. (NEEA, No. 26, pp. 1–4)

Samsung commented in support of a test method with multiple ambient test conditions, specifically IEC 62552, stating that such a method would be more representative in capturing the energy savings benefits of innovative technologies such as variable speed compressors. Samsung stated that the current test procedure, with a single 90 °F ambient test point, was adequate at a time when most of the refrigerators in the market used single speed compressors, but that in the last ten years, variable speed compressors and adaptive control algorithms have allowed compressors to optimize performance for different load conditions as well as minimize temperature fluctuations for better food preservation. Samsung stated that the energy savings of such technologies would be realized under real-world variable-load conditions due to door openings, introduction of large food

[17] On March 18, 2019 DOE issued a notice of request for information on the measurement of average use cycles or periods of use in DOE test procedures. 84 FR 9721 (March 18, 2019).

loads, seasonal temperature changes, and consumer day/night routines. (Samsung, No. 24, pp. 2–3)

Samsung acknowledged that testing in two ambient test conditions would result in an increase in the test burden, but Samsung stated that such burden is justified by the need for representativeness in order to accurately measure the efficiency benefits of new technologies. Samsung recommended that DOE could limit test burden by developing an optional single ambient test condition approach, as DOE has similarly done for the optional measurement or calculation of motor performance in the 2016 test procedure final rule for pumps.[18] (Samsung, No. 24, p. 3)

NEEA also commented in support of an approach in which manufacturers could elect to perform an optional second ambient condition test, noting that this approach would be an incremental approach to incentivize more efficient technologies while not increasing burden for those manufacturers choosing not to run the additional test. (NEEA, No. 26, p. 4)

At the December 2019 NOPR Public Meeting, ASAP commented that IEC 62552 has a strong international pedigree and recommended that DOE perform a side-by-side comparison of the IEC 62552 and the DOE test procedure. (ASAP, Public Meeting Transcript, No. 11, pp. 89–91) The CA IOUs also recommended that DOE conduct such a comparison to determine the representativeness of the single ambient test condition, and stated that the DOE test procedure should provide adequate differentiation of part-load compressor technologies. (CA IOUs, Public Meeting Transcript, No. 11, pp. 91–92)

DOE appreciates the comprehensive feedback from commenters regarding the ambient test condition issue. The primary concerns with the existing single ambient test condition approach were regarding representativeness (specifically for variable speed compressor products) and the potential for circumvention.

DOE recognizes the concern of using a single test condition to measure energy consumption of models with variable speed compressors. While variable speed compressors and single speed compressors may have similar performance at full-load conditions (*i.e.,* full speed and compressor always on), variable speed compressors typically perform more efficiently than single speed compressors when operating at part-load conditions. Variable speed compressors may match the lower cooling demand by reducing speed rather than by cycling on and off, thereby avoiding losses that occur when the system cycles on and off. On March 29, 2021, DOE published a final rule to amend the test procedure for room air conditioners to, in part, provide for the testing of variable speed compressor products to better reflect their relative efficiency gains at lower outdoor temperatures compared to single speed compressor products (the ''March 2021 Room AC Final Rule''). 86 FR 16446 (March 29, 2021). In the March 2021 Room AC Final Rule, DOE explained that the previous test procedure for room air conditioners measured performance while operating at full-load conditions (*i.e.,* the compressor is operated continuously on), and as a result, the existing DOE test procedure for room air conditioners did not capture any inefficiencies due to cycling losses. *Id* at 86 FR 16452. DOE included a methodology for determining and applying a ''performance adjustment factor'' for variable speed room air conditioners to reflect the avoidance of cycling losses that would be experienced in a representative consumer installation (*i.e.,* at part load conditions). 86 FR 16446, 16455–16460. However, the same is not true for the existing test procedures for refrigeration products: the existing 90 °F ambient test point does not impose a full-load test condition for all refrigeration products. As discussed previously in this section, the 90 °F test condition represents typical room conditions (72 °F (22.2 °C)) with door openings (*i.e.,* typical operation rather than maximum thermal load operation). At the ambient test condition temperature of 90 °F, many refrigeration products exhibit compressor cycling, and thus the 90 °F condition typically already represents part-load conditions for single speed compressor products and variable speed compressor products alike. This is further supported by the existence of multiple provisions in HRF–1–2019 and IEC 62552 regarding cycling compressor systems (*e.g.,* stabilization requirements and test period selection requirements). Given that most refrigeration products have compressors that cycle at this test condition, the single elevated ambient test method already captures inefficiencies due to cycling losses (and correspondingly, efficiencies for variable speed compressors avoiding cycling losses) for refrigeration products, which generally addresses the primary concerns that commenters raised regarding the test procedure not adequately capturing efficiency benefits of variable speed compressors.

As discussed, NEEA presented data from testing six refrigerators using two ambient test points of 32 °F and 16 °F (as set forth in IEC 62552), and this data is reproduced in Table III.1. Because the existing DOE test procedures use an ambient test condition of 90 °F (approximately 32 °C), DOE has calculated the performance differentials for these six refrigerators in terms of a percent decrease in energy use from 32 °C to 16 °C.

TABLE III.1—NEEA AMBIENT TEST CONDITION COMPARISON

| Unit | Compressor type | 32 °C annual energy consumption (kWh/yr) | 16 °C annual energy consumption (kWh/yr) | Percent decrease in energy use from 32 °C to 16 °C |
|---|---|---|---|---|
| B | Single Speed | 536.50 | 243.43 | 55 |
| C | Single Speed | 607.19 | 281.61 | 54 |
| F | Single Speed | 563.55 | 291.21 | 48 |
| *Single Speed Mean* | | | | *52* |
| A | Variable Speed | 625.41 | 327.61 | 48 |
| D | Variable Speed | 467.05 | 231.36 | 50 |
| E | Variable Speed | 451.43 | 229.32 | 49 |
| *Variable Speed Mean* | | | | *49* |

**Note:** 16 °C is approximately equal to 60 °F and 32 °C is approximately equal to 90 °F.

[18] On January 25, 2016, DOE published a final rule establishing a new test procedure for pumps with calculation methods applicable for certain types of pumps. 81 FR 4085, 4140.

NEEA's data indicate that the variable speed units exhibited a smaller decrease in energy use than single speed units when testing at 16 °C compared to 32 °C. Specifically, the average percent decrease in energy use (from 32 °C to 16 °C) was 52% for single speed compressor products but only 49% for variable speed compressor products in NEEA's dataset. This indicates that, on average, variable speed compressor products did not exhibit additional savings over single speed compressor products at lower ambient conditions.

In response to comments suggesting that DOE conduct additional investigative testing on a larger sample of single speed compressor products and similar variable speed compressor products, DOE tested 16 additional products using appendices A and B test procedures at ambient conditions of 90 °F and 60 °F to compare the resulting impacts on variable speed and single speed compressor products. DOE's investigative testing results are shown in Table III.2.

TABLE III.2—DOE AMBIENT TEST CONDITION COMPARISON

| Unit | Product class | Compressor type | Total adjusted volume ($ft^3$) | 90 °F annual energy consumption (kWh/yr) | 60 °F annual energy consumption (kWh/yr) | Percent decrease in energy use from 90 °F to 60 °F |
|---|---|---|---|---|---|---|
| G | 13A | Single Speed | 4.4 | 229 | 76 | 67 |
| H | 3 | Single Speed | 11.9 | 312 | 152 | 51 |
| I | 3 | Single Speed | 21.9 | 392 | 189 | 52 |
| J | 3A | Single Speed | 17.6 | 266 | 82 | 69 |
| K | 5A | Single Speed | 27.7 | 682 | 402 | 41 |
| L | 5A | Single Speed | 34.7 | 750 | 404 | 46 |
| M | 9 | Single Speed | 35.2 | 486 | 288 | 41 |
| *Single Speed Mean* | | | | | | *52* |
| N | 13A | Variable Speed | 5.2 | 239 | 63 | 74 |
| O | 3 | Variable Speed | 24.4 | 388 | 161 | 59 |
| P | 5 | Variable Speed | 13.2 | 306 | 157 | 49 |
| Q | 5A | Variable Speed | 27.5 | 508 | 309 | 39 |
| R | 5A | Variable Speed | 28.7 | 748 | 432 | 42 |
| S | 5A | Variable Speed | 39.2 | 764 | 541 | 29 |
| T | 5A | Variable Speed | 39.3 | 645 | 418 | 35 |
| U | 5A | Variable Speed | 40.1 | 782 | 480 | 39 |
| V | 5–BI | Variable Speed | 11.9 | 442 | 152 | 66 |
| *Variable Speed Mean* | | | | | | *48* |
| *Standard Deviation for all Samples (G through V).* | | | | | | *13* |

**Note:** Test results for product class 5A utilize an automatic icemaker energy adder of 84 kWh per year.

Similar to the test results from NEEA, DOE's test results showed no clear performance improvement for variable speed compressor products relative to single speed compressor products at the 60 °F test condition. Specifically, the average percent decrease in energy use (from 90 °F to 60 °F) was 52% for single speed compressor products but only 48% for variable speed compressor products in DOE's dataset, which closely matches the results from NEEA's dataset. This suggests that given the current state of compressor technology, introducing a second low temperature ambient test would have no significant impact on the relative measured energy use of variable speed compressor products compared to single speed compressor products. Therefore, adding a lower ambient temperature test for the purpose of differentiating the performance of variable speed compressors is not justified at this time.

In response to comments indicating that a single ambient test condition introduces the potential for circumvention, DOE provides principles of interpretation for its test procedures in 10 CFR 430.23(a)(7), 10 CFR 430.23(b)(7) and 10 CFR 430.23(ff)(7) to describe the intent of the test procedures and the requirements regarding component operation in the test condition versus typical room temperature operation. For example, energy consuming components that operate in typical room conditions (including as a result of door openings, or a function of humidity), and that are not excluded by the test procedure, must operate in an equivalent manner during energy testing under the test procedure, or be accounted for by all calculations as provided for in the test procedure. 10 CFR 430.23(a)(7)(i). Further, commenters did not provide an explanation for why a test conducted at the high temperature test condition (*i.e.,* 90 °F) and a second low temperature condition (*i.e.,* 60 °F) would be any more robust in preventing circumvention attempts.

On December 8, 2020 DOE published an early assessment review and request for information regarding energy conservation standards for miscellaneous refrigeration products (the ''December 2020 MREFs RFI''). 85 FR 78964 (December 8, 2020). In response to the December 2020 MREFs RFI, the CA IOUs raised concerns about the appropriateness of the 90 °F ambient test condition for MREFs that utilize thermoelectric cooling rather than compressor cooling. The CA IOUs commented that, compared to other refrigeration products, MREFs have a lower cooling load and less frequent door openings. The CA IOUs suggested that alternative testing approaches would be more representative of an average use cycle for MREFs than the load factor adjustment in DOE's current test procedure, and these could also lead to more appropriately engineered solution so that consumers may realize improved real-world benefits. Specifically, the CA IOUs indicated that the adjustment factor of 0.55 in Appendix A may be appropriate for MREFs with compressor cooling, but that there was insufficient evidence presented by DOE that this same factor would be appropriate for MREFs with thermoelectric cooling. The CA IOUs noted that this could misrepresent and

potentially limit the use of non-compressor cooling technologies (such as thermoelectric or magnetocaloric systems), which are capable of operating more efficiently at lower temperature differences between the cabinet interior and the ambient condition. The CA IOUs referenced data for coolers provided during the development of DOE's test procedure for MREFs.[19] (CA IOUs, December 2020 MREFs RFI, No. 5, pp. 3–4)[20]

In the development of the July 2016 Final Rule, DOE considered the data referenced in the CA IOUs comment and determined that one set of test requirements was appropriate for testing coolers in appendix A, regardless of refrigeration technology. 81 FR 46767, 46781–46782. DOE included the 90 °F ambient test temperature and 0.55 usage factor, as initially proposed for vapor-compression coolers, to establish consistent test requirements across all coolers, as this would ensure that all products offering the same consumer utility and function are rated on a consistent basis, thus providing consumers with a meaningful basis on which to compare product energy consumptions. 81 FR 46767, 46782. DOE also stated that manufacturers of products which are unable to maintain the standard 55 °F cooler compartment temperature when subject to a 90 °F ambient condition would be required to pursue a test procedure waiver to determine an appropriate energy use rating for these products that reflects actual energy use under normal consumer use. 81 FR 46767, 46781. As of this final rule, DOE has not received any petitions for waiver regarding non-compressor MREFs.

As such, the 0.55 usage factor applied to calculate energy consumption for MREFs accounts for the reduced cooling load and less frequent door openings for cooler compartments, which is a consistent reduction regardless of refrigeration technology. Furthermore, DOE notes that these provisions have not precluded the availability of thermoelectric coolers on the market and certified to DOE. In this final rule, DOE will maintain the existing approach for testing MREFs, including instructions for pursuing a test procedure waiver when appropriate.

[19] DOE presented laboratory test data for vapor compression and thermoelectric wine chillers in a notice of proposed rulemaking regarding test procedures for MREFs. 79 FR 74893, 74910–74912 (December 16, 2014).

[20] The December 2020 MREFs RFI and corresponding comments are located in the docket of DOE's rulemaking to consider amended energy conservation standards for MREFs. (Docket No. EERE–2020–BT–STD–0039, which is maintained at *https://www.regulations.gov/*).

For the aforementioned reasons, DOE is maintaining the single ambient test condition approach by incorporating by reference the most recent industry test procedure, HRF–1–2019.

2. Updates to AHAM HRF–1–2019

As discussed earlier in section III.B of this document, multiple commenters recommended that DOE incorporate by reference HRF–1–2019 because it is the latest industry test procedure. (AHAM, No. 18 at p. 2; Whirlpool, No. 19, p. 1; Liebherr, No. 16, p. 1; Sub Zero, No. 17, p. 1–2)

In the December 2019 NOPR, DOE noted that HRF–1–2019 was not yet final and provided a link to the public review draft. 84 FR 70842, 70847. Because HRF–1–2019 was not yet available at that time, DOE proposed incorporating the latest industry standard available at that time, HRF–1–2016, with additional proposed amendments in Appendices A and B. 84 FR 70842, 70847–70848. DOE also stated that it would consider incorporating by reference HRF–1–2019 in its entirety when made available for public distribution. 84 FR 70842, 70848.

In response to the December 2019 NOPR, AHAM commented that since posting the draft for public review, AHAM made one non-editorial change incorporated in the published HRF–1–2019 standard related to the two-part equation used to account for defrost energy consumption. (AHAM, No. 18 at pp. 2–3)

For this final rule, DOE reviewed HRF–1–2019 to determine whether it would be an appropriate reference for the DOE test procedures. Consistent with AHAM's comment, DOE observed only editorial changes in HRF–1–2019 compared to the public review draft referenced in the December 2019 NOPR, except for the two-part calculation updates. These calculation updates are discussed further in section III.F of this final rule. Compared to HRF–1–2016, the updates in HRF–1–2019 generally harmonize with DOE's existing requirements for refrigeration products, incorporate the proposals made by DOE in the December 2019 NOPR, or otherwise improve clarity of the industry test method. Other than the updates discussed in this section and the following sections of this final rule, the relevant sections of HRF–1–2019 are substantively consistent with the test procedure proposed in the December 2019 NOPR, which proposed to incorporate by reference certain sections of HRF–1–2016 (*i.e.,* except as discussed in this final rule, any minor changes to terminology, organization, or wording in HRF–1–2019 relative to the December 2019 NOPR would not change the required testing or calculations). Accordingly, DOE is incorporating by reference HRF–1–2019 for its test procedures in appendices A and B.

The following discussion addresses updates resulting from adoption of HRF–1–2019, generally. Following that discussion, DOE presents the topics highlighted in the December 2019 NOPR, and provides separate discussion sections to discuss its proposals, comments received in response to the December 2019 NOPR, and determinations made for this final rule (including incorporation by reference of HRF–1–2019 and any adjustments to the industry standard, as applicable).

Purpose and Scope

Sections 1 and 2 of HRF–1–2019 specify the purpose and scope of the industry test standard. These sections generally harmonize with DOE's existing test requirements and scope of coverage in its regulations in 10 CFR 430.2, 10 CFR 430.23, and Appendices A and B, but include several minor differences. While DOE is incorporating by reference HRF–1–2019 in its entirety, DOE is not referring to section 1 or 2 for testing to avoid potential conflicts with the scope and requirements of DOE's regulations. DOE also states in section 1 of appendices A and B that DOE's regulations take priority in the case of any conflict with HRF–1–2019.

Definitions

DOE provides a number of relevant definitions in 10 CFR 430.2 and in appendices A and B. Additionally, appendices A and B currently reference Section 3, ''Definitions'', of HRF–1–2008. Section 3 of HRF–1–2019 includes updates that generally harmonize with the requirements of the existing DOE test procedures; however, DOE identified certain substantive definition updates or terms that require further clarification, and which are addressed in the following paragraphs.

Section 1 of appendices A and B both include definitions for the term ''through-the-door ice/water dispenser.'' HRF–1–2019 refers to this term but does not include a definition. Because this term is likely well understood in the context of conducting testing per HRF–1–2019, DOE is maintaining the definition for ''through-the-door ice/water dispenser'' in both appendices A and B. Including this definition will additionally provide context for differentiating between refrigeration product classes with and without ''through-the-door ice service'' as specified in 10 CFR 430.32(a).

HRF–1–2019 includes definitions for many terms that DOE defines in 10 CFR 430.2. For example, HRF–1–2019 defines ''refrigerator,'' ''refrigerator-freezer,'' ''freezer,'' and ''miscellaneous refrigeration product.'' The definitions in HRF–1–2019 are generally consistent with DOE's definitions in 10 CFR 430.2, but with minor differences. DOE is including a statement in section 3 of appendices A and B that in case of conflicting terms between DOE's regulations and HRF–1–2019, DOE's definitions take priority.

Compared to the HRF–1–2008 standard, HRF–1–2019 includes a definition for the term ''compartment,'' as discussed in section III.C of this final rule. HRF–1–2019 also provides specific definitions for cooler compartment, freezer compartment, and fresh food compartment. The current test procedure includes definitions for fresh food compartment and freezer compartment by reference to HRF–1–2008. The fresh food compartment and freezer compartment definitions in HRF–1–2019 include updates to harmonize the definitions with the testing requirements. For example, HRF–1–2008 defined freezer compartment in a combination refrigerator-freezer as the compartment(s) designed for storage of foods at temperatures of 8 °F average or lower, but appendix A requires testing freezer compartments to a standardized compartment temperature of 0 °F. (See section 3.2 of appendix A) HRF–1–2019, by contrast, defines freezer compartment in a refrigerator-freezer as a compartment capable of maintaining temperatures colder than 0 °F, which is consistent with the existing test procedure (and HRF–1–2019) requirement to test freezer compartments in refrigerator-freezers to a standardized compartment temperature of 0 °F. With this change, a freezer compartment in a refrigerator-freezer not capable of maintaining a temperature of 0 °F would not be required to be tested at the 0 °F temperature requirement. DOE is not aware of any products that would be affected by this definition change in HRF–1–2019. Because the updated HRF–1–2019 definition better harmonizes with the existing test requirement, DOE is incorporating it in its test procedure by way of incorporation by reference to Section 3, *Definitions,* of HRF–1–2019.

HRF–1–2019's definitions for fresh food compartment and freezer compartment also remove reference to the design intent of the compartments included in the HRF–1–2008 definitions. For example, HRF–1–2008 specifies that the fresh food compartment be designed for the refrigerated storage of food while HRF–1–2019 refers only to the capability of compartments to maintain temperatures as specified in the definitions. This is consistent with the approach DOE uses to define refrigeration products in 10 CFR 430.2. For example, DOE defines freezer as a product capable of maintaining compartment temperatures of 0 °F (as determined per the test procedure), without referencing whether the product is designed for the storage of food. (10 CFR 430.2)

Section 1 of appendix A defines ''cooler compartment'' as a refrigerated compartment designed exclusively for wine or other beverages within a refrigeration product that is capable of maintaining compartment temperatures either (a) no lower than 39 °F (3.9 °C), or (b) in a range that extends no lower than 37 °F (2.8 °C) but at least as high as 60 °F (15.6 °C). HRF–1–2019 also provides a definition for ''cooler compartment'' that specifies the same temperature operating range as the definition in appendix A but removes the provision that the compartment be designed exclusively for wine or other beverages. This update is consistent with the definitions for fresh food compartment, freezer compartments, and DOE's product definitions in 10 CFR 430.2, which all refer to the capability of products to maintain certain compartment temperatures rather than design intent. To ensure consistency among definitions and to avoid reliance on design intent, DOE is adopting the definition for ''cooler compartment'' included in HRF–1–2019 by way of incorporation by reference of Section 3, *Definitions,* of HRF–1–2019. DOE does not expect that this update to the cooler compartment definition would change how products are currently classified or tested. The ''cooler'' definition in 10 CFR 430.2 includes no such reference to storage of wine or other beverages, so this update only applies to cooler compartments in combination cooler refrigeration products. DOE is only aware of combination cooler refrigeration products with cooler compartments designed for refrigerating wine or other beverages, and therefore this amendment would not affect how these products are currently classified or tested.

DOE has determined that the updated definitions in HRF–1–2019 better harmonize the test standard definitions with the test requirements as established in this final rule, improve clarity of the test procedure, and do not substantively change the test requirements compared to the existing approach, except as noted in this final rule.

Anti-Sweat Heater Switches

Section 2.3 of appendices A and B provides instructions regarding anti-sweat heater settings, stating that the anti-sweat heater switch is to be on during one test and off during a second test (except for units equipped with variable anti-sweat heater control). For units shipped with the anti-sweat heater switch in the highest energy use position, the test instructions in section 2.3 of appendix A require an additional test beyond what is required to calculate annual energy use, as described in the following paragraphs.

DOE provides annual energy use calculations for refrigerators and refrigerator-freezers in 10 CFR 430.23(a)(5); freezers in 10 CFR 430.23(b)(5); and miscellaneous refrigeration products in 10 CFR 430.23(ff)(5). These sections refer to per-cycle energy consumption (*i.e.,* the energy use per day), as determined in either appendices A or B, multiplied by 365 days per year to determine annual energy use. For units with anti-sweat heater switches, the annual energy use calculations are based on the average of the per-cycle energy consumption for the standard cycle (*i.e.,* with the anti-sweat heater switch in the highest energy use position) and the per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping. (10 CFR 430.23(a)(5)(ii), 10 CFR 430.23(b)(5)(ii), and 10 CFR 430.23(ff)(5)(ii)) Accordingly, for units with the anti-sweat heater switch shipped in the highest energy position, only the standard cycle is required for testing since the as-shipped position represents the highest energy use position required for the standard cycle. Therefore, for such units, the requirement in section 2.3 of appendices A and B to conduct testing with the anti-sweat heater off is unnecessary for determining annual energy use since only the test with the anti-sweat heater on (*i.e.,* the highest energy use setting) would be used to calculate annual energy use per the calculations in 10 CFR 430.23.

The updated language in HRF–1–2019 harmonizes the test procedure with the annual energy use calculations. Specifically, section 5.5.2(x) of HRF–1–2019 specifies testing anti-sweat heater switches in the highest and lowest energy use positions for each temperature control setting if the product is shipped with the switch in the lowest energy use position (*e.g.,* the

off position); otherwise, it shall be run only in the highest energy use position for each temperature control setting. Conceptually, this requirement in HRF–1–2019 could represent a change from the current testing approach for models in which the as-shipped anti-sweat heater setting is not at either the highest or lowest energy use position (*i.e.,* shipped with the anti-sweat heater at an intermediate setting); however, DOE is not aware of any models with anti-sweat heater control switches offering intermediate settings. Therefore, DOE does not expect this update to require re-testing or re-certification for any existing models.

In summary, the updates included in HRF–1–2019 would avoid the potential for running unnecessary tests that would not be used in calculating annual energy use. For this reason, DOE is incorporating the HRF–1–2019 instructions for anti-sweat heater switch settings with no modification.

Test Conditions and Setup

Section 2.2 of appendices A and B incorporates by reference HRF–1–2008 sections 5.3.2 through 5.5.5.5 (excluding section 5.5.5.4) for certain test setup and operational conditions. These sections provide requirements for certain test conditions (relative humidity, air circulation, and radiation), instruments (temperature, electrical, time, relative humidity, and weight), and general test requirements (power supply, test setup, including unit settings, loading, and internal temperature measurements). Section 2 of appendices A and B otherwise provides additional test condition requirements, including ambient temperature conditions, anti-sweat heater instructions as discussed in the previous section, and additional test setup instructions.

In the December 2019 NOPR, DOE proposed to incorporate by reference sections 5.3.2 through 5.5.6.4 of HRF–1–2016, which specify test setup and operational conditions that are generally the same as those currently specified in the HRF–1–2008 incorporation by reference, in appendices A and B. 84 FR 70842, 70869, 70874. Section 5.5.6.5 of HRF–1–2016, which was not proposed for incorporation by reference in the December 2019 NOPR, includes instructions for placing a thermocouple in any ice storage compartment. Section 5.5.6.5 of HRF–1–2019 includes this same setup requirement. Given that this temperature measurement is not used elsewhere in the standard, and to avoid unnecessary test setup requirements, DOE is not referencing this section of HRF–1–2019 for its test procedures. DOE is otherwise incorporating by reference section 5 of HRF–1–2019, except as noted in this final rule, which generally maintains the existing test procedure setup and operational condition requirements.

At the end of section 2.6 in appendix A and 2.4 in appendix B, DOE specifies that for cases in which setup is not clearly defined by the test procedure, manufacturers must submit a petition for a waiver. HRF–1–2019 does not include this instruction, as it is specific to DOE's requirements. To ensure that models are tested and rated correctly under DOE's regulations, DOE is maintaining this instruction regarding test setups requiring petitions for waiver.

Test Measurements

Section 5.1 of appendices A and B provides instructions regarding temperature measurements. Section 5.1(b) of appendices A and B specify the recording requirements when the interior temperature sensor arrangement does not conform to the setups specified in HRF–1–2008 and specify that the certification report must indicate that non-standard sensor locations were used. HRF–1–2019 generally includes this same recording requirement as in sections 5.1(b) of appendices A and B (See, for example, sections 5.5.6.1, 5.5.6.2, 5.5.6.4, and 5.8.1). However, DOE is maintaining the existing language from sections 5.1(b) of appendices A and B, with updated references to HRF–1–2019, to ensure that the test procedure explicitly specifies DOE's record keeping and reporting requirements. DOE is also amending the corresponding certification requirements in 10 CFR 429.14 (for refrigerators, refrigerator-freezers, and freezers) and 429.61 (for miscellaneous refrigeration products) to update references to appendices A and B as amended in this final rule.

Section 2.9 of appendix A, section 2.7 of Appendix B, and section 5.1.1 of both appendices A and B refer to temperature measurement intervals of 4 minutes or less. Section 5.1.1 of appendix A also specifies that the measurement intervals for multiple refrigeration system products shall not exceed one minute. Sections 3.28, 5.5.6.1, 5.5.6.2, 5.5.6.4, and 5.8.1.1 of HRF–1–2019 refer to temperature measurement intervals not to exceed one minute. Based on DOE's testing of refrigeration products, the existing one-minute requirement for multiple refrigeration system products, and the presence of the one-minute interval requirement in HRF–1–2016, DOE has determined that test laboratories already have the capability to record data at one-minute intervals using automated data acquisition systems, and manufacturers likely already record data at one-minute (or shorter) intervals. Accordingly, DOE is incorporating by reference this updated requirement in HRF–1–2019. DOE does not expect that this update will require re-testing (or re-certification) of products already certified as complying with the current energy conservation standards when tested to the existing DOE test procedure, as manufacturers likely already test in accordance with the updated requirements specified in HRF–1–2019. In the event manufacturers do not already record data at one-minute intervals for existing models, DOE expects that any impact of this amendment on measured energy use would be *de minimis,* and manufacturers will not be required to re-test or re-certify performance of the existing models.

DOE's current test procedures incorporate by reference section 5.5.1 of HRF–1–2008 regarding power supply requirements, stating that, unless otherwise specified, the electrical power supply shall be 115 ± 1 V, 60 Hz at the product service connection and the actual voltage shall be recorded as measured at the product service connection with the compressor motor operating. Section 5.5.1 in HRF–1–2016 and HRF–1–2019 similarly specify that power supply be maintained at 115 ± 1 V, 60 Hz at the product service connection, and that the actual voltage shall be maintained and recorded throughout the test, excluding instantaneous voltage fluctuations caused by the turning on or off of electrical components. The updated language in the more recent versions of HRF–1 is generally consistent with the existing test approach, with additional clarification to limit the potential for test variability. DOE does not expect the updated language to affect current model classifications or energy use ratings. DOE notes that HRF–1–2019 does not specify the required data recording intervals for power supply measurements. For consistency with the temperature measurement intervals and with how DOE expects manufacturers are currently testing refrigeration products, DOE is specifying in appendices A and B that the power supply requirements referenced in HRF–1–2019 section 5.5.1 be determined based on measurement intervals not to exceed one minute. DOE does not expect that this update will require re-testing or re-certification of any models, as manufacturers likely already test in accordance with this requirement, similar to the temperature

recording requirements discussed in this section.

Test Conduct

Section 3.2 of both appendices A and B specifies which compartment temperatures are used to compare to the standardized compartment temperatures to determine appropriate temperature settings for testing, as specified in the existing Table 1 in both appendices A and B. HRF–1–2019 generally includes the same test instructions regarding temperature settings but does not include the specification at the end of section 3.2 in both appendices A and B regarding what compartment temperatures should be compared to standardized compartment temperatures to determine appropriate temperature settings for testing. DOE is maintaining the provisions regarding compartment temperatures, with updated references to HRF–1–2019, to ensure that the test procedure maintains the existing temperature setting instructions.

In the December 2019 NOPR, DOE proposed to update the formatting of Table 1 in both appendices A and B and to provide instructions regarding coverage and test procedure waivers. 84 FR 70842, 70857–70858. Table 5–1 in HRF–1–2019 includes test instructions that are generally consistent with DOE's requirements. However, DOE expects that the amended Table 1 as proposed in the December 2019 NOPR improves clarity of the test requirements and the potential need for test procedure waivers by improving the table formatting (*i.e.,* merging cells to show applicability of settings and results) and referring to the test procedure waiver provisions rather than a ''no energy use rating'' outcome from testing. The updated text in Table 5–1 of HRF–1–2019 improves clarity regarding test results by referring to tested compartment temperatures relative to standardized compartment temperatures. Accordingly, DOE is providing an alternate table to be used in place of Table 5–1 of HRF–1–2019, consistent with the December 2019 NOPR proposal, but including the improved wording from Table 5–1 of HRF–1–2019.

Additionally, section 7 of appendices A and B provides general instructions regarding the applicability and requirements for test procedure waivers, while HRF–1–2019 includes no such reference. Therefore, DOE is maintaining the test procedure waiver instructions as currently specified in section 7 of appendices A and B.

Section 3.3 of appendix A provides an optional test for models with two compartments and user-operable controls, which allows for the use of three tests as specified in Australian/New Zealand Standard 4474.1:2007, ''Performance of household electrical appliances—Refrigerating appliances, Part 1: Energy consumption and performance'' (''AS/NZS 4474.1:2007''). This optional approach incorporates a three-test triangulation method to calculate performance at the standardized compartment temperatures rather than the two-test interpolation approach otherwise generally applied in appendix A. HRF–1–2019 includes the same reference to the AS/NZS 4474.1:2007 optional approach as in section 3.3 of appendix A; however, the instructions for that approach are included in section 5.6.3(6), within the section for ''Temperature Settings for Convertible Compartments.'' To ensure proper application of the optional test method, DOE is providing separate instructions in appendix A to clarify the use of section 5.6.3(6) of HRF–1–2019 (*i.e.,* as an optional alternative test independent from the ''Temperature Settings for Convertible Compartments'' section in HRF–1–2019).

Additionally, DOE is providing a reference for ''AS/NZS 4474.1:2007'' in appendix A to clarify its use throughout the test procedure. HRF–1–2019 refers to this test standard, as described in the previous paragraph, but does not include a full reference.

Calculations

In the December 2019 NOPR, DOE proposed to correct an omission regarding the calculations for the optional AS/NZS 4474.1:2007 test approach described in the previous section. 84 FR 70842, 70857. The energy use calculations associated with the optional test method are not currently included in appendix A; accordingly, DOE proposed to reinstate the calculations as previously established for refrigerator-freezers prior to the inadvertent omission from appendix A. *Id.* HRF–1–2019 does not include the energy use calculations associated with the optional AS/NZS 4474.1:2007 test approach; therefore, DOE is providing the calculations associated with that test in appendix A, as proposed in the December 2019 NOPR. Because the AS/NZS 4474.1:2007 approach is applicable to products with multiple temperature compartments, the approach is also applicable to combination cooler refrigeration products (*i.e.,* not only to refrigerator-freezers). Therefore, DOE is also including energy use calculations for the AS/NZS 4474.1:2007 optional test approach as applied to combination cooler refrigeration products.

Section 5.10 of HRF–1–2019 provides annual energy consumption calculations. As discussed earlier in this section of this final rule, DOE currently provides annual energy use calculations as part of its test procedures in 10 CFR 430.23(a)(5), 10 CFR 430.23(b)(5), and 10 CFR 430.23(ff)(5). The calculations in section 5.10 of HRF–1–2019 are consistent with DOE's current calculations. To avoid duplicate calculation requirements, DOE is updating 10 CFR 430.23(a)(5), 10 CFR 430.23(b)(5), and 10 CFR 430.23(ff)(5) to remove calculation instructions and to instead reference appendices A or B, as appropriate, which in turn reference section 5.10 of HRF–1–2019, for determinations of annual energy use.

Specific Amendments Addressed by DOE

The following sections discuss other specific amendments to the test procedures for refrigeration products, typically made by reference to HRF–1–2019. These amendments relate to compartment definitions, test setup requirements, ambient temperature requirements, stabilization requirements, defrost energy consumption, icemaking energy consumption, and other refrigeration product features.

*C. Compartment Definitions and Clarifications*

Although the term ''compartment'' is used throughout the current DOE test procedures in appendices A and B, the term is not defined. The DOE test procedures use the term to refer to both individual enclosed spaces within a product (*e.g.,* referring to a specific freezer compartment), as well as all enclosed spaces within a product that meet the same temperature criteria (*e.g.,* referring to the freezer compartment temperature—a volume-weighted average temperature for all individual freezer compartments within a product).

In the December 2019 NOPR, DOE proposed to include a definition for ''compartment'' consistent with AS/NZS 4474.1:2007 but adapted to use the appropriate DOE terminology for certain terms within the definition. 84 FR 70842, 70847. Specifically, DOE proposed to define a ''compartment'' as an enclosed space within a refrigeration product that is directly accessible through one or more external doors and may be divided into sub-compartments. *Id.* DOE stated that the proposal would not affect how compartments would be classified or treated under the test procedure and, accordingly, DOE did not expect that the proposed definition

would impact measured energy consumption. *Id.*

To provide further detail, DOE proposed to define ''sub-compartment'' as an enclosed space within a compartment that may have a different operating temperature from the compartment within which it is located. *Id.* DOE stated that this definition, coupled with the proposed definition for ''compartment,'' would remove the need to separately define ''separate auxiliary compartment'' and ''special compartment'' because these terms would be redundant with the proposed compartment definitions; therefore, DOE proposed to remove the terms ''separate auxiliary compartment'' and ''special compartment'' from appendices A and B and replace them with ''compartment'' or ''sub-compartment'' as appropriate. *Id.*

In response to the December 2019 NOPR, AHAM commented that HRF–1–2019 includes definitions for ''compartment'' and ''sub-compartment'' consistent with the December 2019 NOPR proposals. (AHAM, No. 18, pp. 7–8) DOE did not receive any comments in objection to the proposals for compartment definitions.

For the discussed reasons, DOE is adopting the definitions for ''compartment'' and ''sub-compartment'' through incorporation of section 3.8 of HRF–1–2019.

Section 5.5.2(s) of HRF–1–2019 includes instructions for testing products with convertible compartments consistent with DOE's existing test procedure in appendix A, section 2.7. However, these instructions specifically pertain to individual compartments within a product that may operate as fresh food, freezer, or cooler compartments without affecting the overall product's classification (*e.g.,* as a ''refrigerator'' or ''freezer''). For example, the current instruction regarding convertible compartments is included in appendix A. If a model consisting of a single convertible compartment were to be tested as a freezer compartment, appendix B rather than appendix A would be the applicable test procedure.

In the April 2014 Final Rule, DOE separately addressed convertible products, such as those that can switch from ''refrigerator'' to ''freezer'' and for which more than one product class may apply. DOE stated that, ''in the case of a product for which the convertible compartment is the only compartment (*i.e.,* the entire product is convertible), the product effectively meets the definitions of two different covered products'' and that ''DOE is requiring that convertible products be tested and certified as both refrigerators and freezers if the products meet the applicable definition(s).'' 79 FR 22319, 22343.

DOE is aware of products currently available on the market that indicate capability to be converted between refrigerator operation and freezer operation, and that are only certified to DOE's Compliance Certification Management System (''CCMS'') database as freezers.

Hence, DOE is reiterating its position regarding treatment of convertible products from the April 2014 Final Rule:

DOE will require that manufacturers certify each individual model as complying with the energy conservation standard applicable to all product classes identified in § 430.32(a) into which the individual model falls if the individual model is distributed in commerce as a model within that product class. The manufacturer must assign a different basic model number to the units in each product class even if a manufacturer uses the same individual model number to identify the product. As an example, if a single individual model were distributed in commerce as an automatic defrost all-refrigerator (product class 3A) and as an automatic defrost upright freezer (product class 9), the manufacturer could use the same individual model number but would be required to test the model according to the test procedure applicable to each corresponding product class (*i.e.,* appendix A for class 3A and appendix B for class 9). The manufacturer would also need to certify each basic model separately (*i.e.,* in product class 3A and in product class 9) using a different basic model number for the two product classes. 79 FR 22319, 22343.

### *D. Test Setup*

In the December 2019 NOPR, DOE discussed multiple aspects of the test procedure setup requirements, specifically with regard to built-in products, freezer drawers, test platforms, products with separate external temperature controls, and vertical ambient temperature measurement locations. 84 FR 70842, 70852–70854. The following sections discuss these test setup topics, including the resulting amendments established in this final rule.

#### 1. Built-In Test Configuration

Built-in refrigeration products generally are products that (1) have unfinished sides that are not intended to be viewable after installation; (2) are designed exclusively to be installed totally encased by cabinetry, fastened to the adjoining cabinetry, walls, or floor; and (3) are either equipped with a factory-finished face or accept a custom front panel. (10 CFR 430.2) In the development of the existing test procedures for refrigeration products, DOE presented data indicating that performing testing in a built-in enclosure (*i.e.,* enclosing the units in simulated cabinetry) may affect measured energy consumption for certain configurations of built-in products. 78 FR 41610, 41649–41650 (July 10, 2013). Those products that reject condenser heat at the back of the unit showed a potential increase in energy use when tested in an enclosure. However, data supplied by Liebherr [21] indicated no significant impact on measured energy consumption when rear-condenser built-in units were tested in an enclosure consistent with manufacturer recommendations. 78 FR 41610, 41650.

In the June 2017 RFI, DOE requested further information on appropriate testing for built-in products, including energy impacts of testing in an enclosure, representativeness of test results compared to actual consumer use, test burden, and any potential alternative test approaches. 82 FR 29780, 29783–29784. Based on available test data and stakeholder comments received in response to the June 2017 RFI, in the December 2019 NOPR, DOE tentatively determined that testing built-in units in enclosures consistent with the manufacturer installation instructions would result in no significant difference in measured energy use compared to testing in a freestanding configuration, and therefore, DOE did not propose to amend the current requirement that all units be tested in the freestanding configuration. 84 FR 70842, 70851–70852.

In response to the December 2019 NOPR, AHAM, FSI, and Sub Zero commented that requiring enclosures for built-in testing would be unduly burdensome without a corresponding benefit to the representativeness or accuracy of the test procedure. (AHAM, No. 18, p. 7; FSI, No. 21, p. 2; Sub Zero, No. 17, p. 2)

Based on the information gathered throughout the rulemaking process and consideration of the comments received,

[21] Liebherr provided data as part of the previous test procedure rulemaking. These documents and corresponding comments are located in the docket of DOE's previous rulemaking to develop test procedures for refrigerators, refrigerator-freezers, and freezers. (Docket No. EERE–2012–BT–TP–0016, which is maintained at *https://www.regulations.gov/*) (See Document No. EERE–2012–BT–TP–0016–0034).

DOE is maintaining the existing test approach for built-in products by adopting the test method in HRF–1–2019, which does not require that built-in products be tested in an enclosure.

2. Thermocouple Configuration for Freezer Drawers

As discussed in section III.B of this document, the current test procedures for refrigeration products incorporate by reference portions of HRF–1–2008 for testing requirements. Section 5.5.5.5 of HRF–1–2008 includes figures specifying thermocouple placement for several example fresh food and freezer compartment configurations. HRF–1–2008 also provides that in situations where the interior of a cabinet does not conform to the configurations shown in the example figures, measurements must be taken at locations chosen to represent approximately the entire cabinet.

In the December 2019 NOPR, DOE proposed to incorporate by reference HRF–1–2016 and the relevant errata, including a clarification to Figure 5–2. 84 FR 70842, 70852–70853. DOE also proposed to amend appendices A and B to explicitly specify that for freezer drawers, the thermocouple setup for drawer-type freezer compartments must follow sensor layout type 6 specified in HRF–1–2016, as the configurations in Figure 5–2 of HRF–1–2016 (as well as HRF–1–2008) do not specify their applicability to drawer compartments. *Id.*

In response to this proposal in the December 2019 NOPR, AHAM commented that DOE should instead incorporate by reference the provisions in HRF–1–2019, which are identical to those in HRF–1–2016 but also include the aforementioned errata. (AHAM, No. 18, p. 8)

HRF–1–2019 explicitly indicates in the notes to Figure 5–2 that freezer compartments less than 2 cubic feet in volume should be tested with one thermocouple located in the geometric center of the compartment. HRF–1–2019 also states that the type 5 and type 6 freezer thermocouple configurations in Figure 5–2 apply to vertical freezers and freezer compartments with either doors or drawers, addressing the clarification that DOE had proposed in the December 2019 NOPR.

Based on its review of HRF–1–2019, DOE has determined that the test requirements in HRF–1–2019 are consistent with the December 2019 NOPR proposal. Therefore, DOE is adopting these provisions by incorporating by reference HRF–1–2019.

3. Test Platform Requirements

Section 2.1.3 in both appendices A and B requires that a test platform be used if the test chamber floor temperature is not within 3 °F of the measured ambient temperature. If a platform is used, it must have a solid top with all sides open for air circulation underneath, and its top shall extend at least 1 foot beyond each side and front of the unit under test and extend to the wall in the rear. DOE included this requirement in its test procedures to limit the variability of airflow near the unit during testing. Airflow directly at the base of the unit may increase heat transfer from the condenser and compressor compartment, resulting in better measured energy performance compared to a unit with no airflow at the base of the unit.

As discussed in the December 2019 NOPR, the text of section 2.1.3 in appendices A and B does not explicitly address the setup for a test chamber floor that has vents for airflow. 84 FR 70842, 70853. DOE stated that such a test chamber floor is analogous to a ''platform'' because the floor is elevated above an airflow pathway, and therefore, testing should follow the same procedure required for a test platform. *Id.* DOE proposed to specify that for a test chamber floor that allows for airflow (*e.g.,* through a vent or holes), any airflow pathways through the floor must be located at least 1 foot away from all sides of the unit. *Id.* DOE also stated that, based on experience with third-party laboratories, the proposal is consistent with current industry practice and therefore would not impact measured energy use. *Id.*

In response to the December 2019 NOPR, AHAM supported DOE's proposal to specify that airflow pathways through the test floor must be located at least one foot away from all sides of the unit, indicating that this is consistent with the revised test procedure in HRF–1–2019. (AHAM, No. 18, p. 8)

Based on the foregoing discussion, DOE is adopting these test platform requirements through incorporation by reference of section 5.3.1 of HRF–1–2019.

4. Separate External Temperature Controls

In 2014, DOE granted a waiver to Liebherr to allow for testing a refrigerator intended to be connected to a separate freezer that houses the controls for both the refrigerator and freezer cabinets. 79 FR 19886 (April 10, 2014; case no. RF–035). Under the waiver approach, Liebherr must test the subject refrigerator according to appendix A with the additional requirement that the freezer cabinet (with controls for both the refrigerator and freezer) be close enough to allow for the electrical connection to the refrigerator, but far enough away to avoid interfering with ambient airflow or other test conditions. The freezer must be set to the ''off'' position for testing. 79 FR 19886, 19887–19888.

In the December 2019 NOPR, DOE stated that it is not aware of any other products for which the cabinet controls are housed in a separate product; however, DOE proposed to amend appendices A and B to address such products to eliminate the potential need for additional test procedure waivers. 84 FR 70842, 70853. DOE proposed to follow the approach specified in the Liebherr waiver, but with revisions to be applicable to different cabinet configurations. *Id.*

In response to this proposal, Liebherr commented that Liebherr's products requiring the test procedure waiver for separate external temperature controls have been discontinued and Liebherr is likewise not aware of other such products. (Liebherr, No. 16, p. 1) AHAM provided a similar comment, and both commenters suggested there is no longer a need for such an amendment to the DOE test procedures. (Liebherr, No. 16, p. 1; AHAM, No. 18, pp. 8–9)

HRF–1–2019 does not include the additional instructions that DOE proposed in the December 2019 NOPR regarding products with external controls. Based on DOE's review of the market and on the comments from Liebherr and AHAM indicating that products requiring such instructions are no longer available, DOE is not amending the test procedure to include instructions specific for refrigerators intended to be connected to a separate freezer that houses the controls for both the refrigerator and freezer cabinets models. The publication of this final rule terminates the existing Liebherr waiver consistent with 10 CFR 430.27(h)(3) and 10 CFR 430.27(l).

5. Ambient Temperature Measurement Locations

Section 2.1.2 of both appendices A and B requires that a test room vertical ambient temperature gradient of no more than 0.5 °F per foot (0.9 °C per meter) must be maintained during testing. To demonstrate that this requirement has been met, test data must include measurements taken using temperature sensors at locations 10 inches from the center of the two sides of the unit under test at heights of 2

inches and 36 inches above the floor or supporting platform and at a height of 1 foot above the unit under test. The requirement to measure temperature 1 foot above the unit under test does not explicitly address products with components that extend above the top of the refrigerated storage cabinet (*e.g.,* beer dispensers or ''keg refrigerators'' with taps on top of the cabinet).

In the December 2019 NOPR, DOE proposed that when measuring the ambient temperature 1 foot above the unit, the top of the unit should be determined by the refrigerated cabinet height, excluding any accessories or protruding components on the top of the unit (*e.g.,* taps or dispensers). 84 FR 70842, 70854. DOE stated that this proposal would reduce the potential for testing variability and not impact measured energy use. *Id.*

AHAM commented in response to the December 2019 NOPR that DOE's proposal is consistent with the updates to HRF–1–2019 section 5.3.1. (AHAM, No. 18, p. 9)

Section 5.3.1 of HRF–1–2019 includes instructions that are consistent with the previous ambient temperature measurement locations but does not explicitly clarify that the top of the unit should be determined by the refrigerated cabinet height, excluding any accessories or protruding components on the top of the unit, as DOE had proposed in the December 2019 NOPR. In this final rule, DOE is incorporating that specification in section 5.1(a) of both appendices A and B to supplement the reference to HRF–1–2019.

Additionally, HRF–1–2019 includes new provisions for the ambient temperature measurement locations for units 36 inches or less in height. Specifically, section 5.3.1 of HRF–1–2019 states that for a product height of 36 inches (91.5 cm) or less, the ambient temperature shall be recorded at points located at a distance of the product height divided by two above the floor or platform and 10 inches (25.4 cm) from the center of the two sides of the unit under test. This is in contrast to the provision for products greater than 36 inches in height (and consistent with the current DOE test procedures), for which HRF–1–2019 states that the ambient temperature be measured at locations 36 inches above the floor or platform and 10 inches (25.4 cm) from the center of the two sides of the unit under test, consistent with the existing requirement for testing all products.

After considering the new provisions for products 36 inches or less in height, DOE acknowledges that maintaining ambient temperature around the actual product dimensions rather than above units with height less than 36 inches would ensure the most repeatable and reproducible testing. Therefore, DOE is adopting these provisions by incorporating by reference HRF–1–2019. DOE expects that this update would not affect measured energy use compared to the existing approach (*i.e.,* with ambient thermocouples 36 inches above the test floor). Section 2.1.2 of Appendices A and B requires a maximum vertical ambient temperature gradient of 0.5 °F per foot, thereby limiting the variability of the ambient temperature as measured at different heights around the unit under test. Given that the test procedure amendment is not expected to change measured energy use, DOE does not expect the amendment to require re-testing or impact compliance of the affected products.

*E. Test Conditions*

1. Ambient Temperature and Vertical Ambient Gradient

Section 2.1.2 of both appendices A and B, which, as discussed in the previous section, addresses the vertical ambient temperature gradient, does not specify the period during which the vertical ambient temperature gradient must be maintained. Section 2.1.1 of both appendices specifies that the ambient temperature shall be maintained during both the stabilization period and test period. DOE stated in the December 2019 NOPR that the vertical ambient temperature gradient should be maintained during both the stabilization period and test period to ensure consistent ambient conditions throughout both periods. 84 FR 70842, 70853–70854. Thus, DOE proposed to specify that the vertical ambient temperature gradient be maintained during both the stabilization period and test period. *Id.*

AHAM indicated that this proposal is consistent with the updates to HRF–1–2019 section 5.3.1. (AHAM, No. 18, p. 9)

Section 5.3.1 of HRF–1–2019 does not explicitly provide that the vertical ambient temperature gradient should be maintained during both the stabilization period and test period to ensure consistent ambient conditions throughout both periods, as DOE had proposed. Additionally, section 5.3.1 of HRF–1–2019 specifies the ambient temperature requirement (90.0 ± 1.0 °F) must be maintained during the test period. This omits the current DOE requirement in section 2.1.1 of appendices A and B that the ambient temperature shall be maintained during both the stabilization period and test period.

To ensure that appropriate ambient conditions are maintained throughout testing, including both the stabilization and test periods, the amendments in this final rule incorporate by reference HRF–1–2019 and additionally provide that both the ambient temperature and vertical ambient temperature gradient must be maintained during both the stabilization period and test period.

2. Stabilization

This final rule establishes several amendments to stabilization criteria included in the test procedures for refrigeration products. These amendments adopt the relevant provisions in HRF–1–2019, which DOE is incorporating by reference, and are consistent with the amendments DOE proposed in the December 2019 NOPR. DOE addresses the specific topics and amendments regarding the stabilization amendments in the following sections.

Elapsed Time Between Measurement Periods

Section 2.9 in appendix A and section 2.7 in appendix B provide two options for determining whether steady-state conditions exist based on a maximum rate of change of average compartment temperatures for a unit under test. The first option (''part A stability'') specifies determining the rate of change of compartment temperatures by comparing temperature measurements recorded during a period of at least 2 hours to the measurements recorded over an equivalent time period, with 3 hours elapsing between the two measurement periods. If this first option cannot be used, a second option (''part B stability'') specifies that the average of the measurements during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours and including the last complete cycle before a defrost period (or if no cycling occurs, the average of the measurements during the last 2 hours before a defrost period) are compared to the same averaging period before the following defrost period.

For test units with cycling compressors, it may not be possible to measure temperatures over complete compressor cycles while allowing exactly 3 hours to elapse between the measurement periods, as required for part A stability. However, as DOE stated in the development of the April 2014 Final Rule, DOE considers the 3-hour period to represent a minimum elapsed time between temperature checkpoint periods. 78 FR 41610, 41651 (July 10, 2013). Accordingly, in the December

2019 NOPR, DOE proposed to clarify that the time elapsed between measurement periods must be at least 3 hours for the stability check. 84 FR 70842, 70845.

Section 3.28(a) of HRF–1–2019 specifies that 3 hours is the minimum time that must elapse between measurement periods using this option to verify steady-state conditions; hence, DOE is adopting this provision through incorporation by reference of HRF–1–2019.

Use of Stabilization Data for Steady-State Test Period

In response to the June 2017 RFI, multiple interested parties suggested that for certain products, data recorded during the stabilization period could be considered part of the test period data. (AHAM, No. 5 at p. 8; BSH Home Appliances Corporation (''BSH''), No. 2 at p. 2; Sub Zero, No. 4 at p. 2) DOE tentatively agreed that the stabilization period and part one of a two-part energy test capture essentially the same unit operation, and in the December 2019 NOPR proposed to amend the test period requirements in appendices A and B to provide that, if the part A stabilization criteria is used, that same period be used for steady-state test period data, where appropriate (*i.e.,* for the test periods that do not capture defrosts). 84 FR 70842, 70854.

In response to the December 2019 NOPR, AHAM again supported a change that would allow full stability data to be used for the first part of the test instead of requiring a separate test part one test.[22] (AHAM, No. 18, pp. 9–10) AHAM reiterated at the December 2019 NOPR Public Meeting that using a proven period of stability for both stabilization and part one test periods is possible now and was not implemented in earlier versions of HRF–1 because newer data acquisition technologies allow labs to view and assess data in real time. (AHAM, Public Meeting Transcript, No. 11, p. 67) AHAM also recommended that DOE adopt the provisions in HRF–1–2019 to address this issue. (*Id.*)

The CA IOUs and CEC expressed concern that data from when the unit under test is achieving steady state operation should not be used for test period data. (CA IOUs, No. 23, p. 4; CEC, No. 20, pp. 4–5) These commenters stated that because the stabilization period is the timeframe the system takes to achieve steady state, any data collected during this period is ill-suited for product efficiency ratings. The CA IOUs and CEC also asked whether there is any precedent for such an approach and whether there are independent data and analysis that can validate the data quality of the stabilization period. (*Id.*)

Section 3.28 of HRF–1–2019 specifies criteria to confirm that the test unit has achieved stable operation. The reference to stabilization and steady state periods refer to units that are already in stable operation rather than units achieving stability. Thus, the use of a steady state period as the test period ensures that data representing stable operation is used for the test period.

Data used to confirm stable conditions is used as part of the test data only in specific circumstances. Section 5.7 of HRF–1–2019 provides that the data used to confirm steady state conditions is used as data for part one of the variable defrost control test or as the non-automatic defrost test period. Section 5.7.2.1.1 also provides that the steady state data may be used for part one of the long-time automatic defrost control test if a two-part test period is conducted. In each of these circumstances, the data confirming steady state conditions captures the same type of unit operation as the data required for certain test periods under the existing test procedure approach (*i.e.,* normal compressor operation and no operation associated with a defrost). The approach established in this final rule, by reference to HRF–1–2019, avoids the requirement for multiple data acquisition periods capturing the same types of unit operation. Further, the updated approach specifically requires that steady state conditions be confirmed on the test period data, whereas the existing approach requires confirming steady state prior to a test period.

Through incorporation by reference, DOE is adopting the provisions in section 3.28, section 5.7.1, and section 5.7.2.1.1 of HRF–1–2019, which use verified stabilization data as the steady-state test periods for certain product types. These requirements are consistent with DOE's proposal in the December 2019 NOPR.

Irregular Compressor Cycling

Stabilization determinations may be difficult for products with multiple compressors or irregular compressor cycling. For these products, the average compartment temperatures over one complete compressor cycle may not be representative of the average compartment temperatures over a longer period of operation with multiple compressor cycles. For example, a product with a combination of long and short compressor on cycles during normal operation would likely have either higher or lower average compartment temperatures over an individual compressor on/off cycle, when compared to the average compartment temperatures over a longer period of operation with multiple compressor cycles.

Figure 1 in appendix A shows the requirements for selecting the defrost portion of the test for a two-part test, including that the compressor cycles immediately preceding (*i.e.,* cycle A) and following (*i.e.,* cycle B) the defrost portion of the test must be within 0.5 °F of the non-defrost part of the test. As discussed in the December 2019 NOPR, products with irregular compressor cycling may not be able to meet the requirements for determining the start and end points for the defrost portion of the test when using the two-part test as provided in section 4.2.1.1 in appendices A and B (and 4.2.3.4.2 in appendix A for multiple-compressor products) because the average temperature of an individual compressor cycle may never match the average temperature over a longer period of operation that includes many compressor cycles. 84 FR 70842, 70854–70855. For example, a product with a combination of long and short compressor on cycles during normal operation would likely have either higher or lower average compartment temperatures over an individual compressor on/off cycle, when compared to the average compartment temperatures over a longer period of operation with multiple compressor cycles. *Id.* For cases of irregular compressor cycling using the two-part test method, DOE proposed to include an alternate determination of when to start and end the defrost test period. *Id.* DOE proposed that the beginning of the period be determined based on the average compartment temperatures over one or more complete compressor cycles before a defrost, that the average temperatures over the multiple complete compressor cycles must be within 0.5 °F of the average determined over the first part of the test (''part one'', the steady-state test period), and that all cycles included in the averaging period would be included within the defrost test period (''part two''). *Id.* Similarly, the test period would end with a period of complete compressor cycles after a defrost with the average compartment temperatures over that period within

[22] DOE notes that the terms ''part one test'' and ''first part of the test'' refer to steady-state test periods which do not capture defrost energy use. ''Part two'' of a two-part test period captures the energy consumption associated with defrosting operation. The selection of this data period is described further in a subsequent subsection of this document.

0.5 °F of the average determined over the first part of the test, with all compressor cycles included in the averaging period included in the defrost test period. *Id.*

AHAM expressed general support for this proposal and suggested that the updates in HRF–1–2019 would address such issues. (AHAM, No. 18, pp. 9–10)

Compared to DOE's proposed approach in the December 2019 NOPR, HRF–1–2019 has a similar method for determining the defrost test period. Section 5.7.2.1.4 of HRF–1–2019 addresses systems with irregular cycling compressors, stating that when using a compressor cycle pattern to establish cycle A, cycle B, and the first part of the test, the compressor cycle pattern shall be the same for all. This is depicted in Figure 5–4 of HRF–1–2019. The method in section 5.7.2.1.4 of HRF–1–2019 allows for the use of a consistent pattern of irregular compressor cycles to be used in place of single, regular compressor cycles. Additionally, whereas the method proposed by DOE would require that all compressor cycles included in the averaging period be included in the defrost test period, the method in section 5.7.2.1.4 of HRF–1–2019 is consistent with the method currently used in section 4.2.1.1 of appendices A and B, and would exclude cycle A and cycle B (which themselves may be cycle patterns) from the defrost part of the test period.

DOE agrees that the method in section 5.7.2.1.4 of HRF–1–2019 is consistent with the intent of the current test procedures in appendices A and B and expects that it will improve representativeness, reproducibility, and repeatability of test results for products with irregular compressor cycling by ensuring consistent selection of cycle A and cycle B used to define the defrost portion of the test for these products. Additionally, the approach in HRF–1–2019 treats regular repeating sequences of compressor operation as normal compressor cycles, which ensures that units with regular and irregular compressor cycling operation are tested in a consistent manner. While the HRF–1–2019 approach represents a minor change from the method proposed in the December 2019 NOPR (although it is consistent with the method included in the draft of HRF–1–2019 for public review, as referenced in the December 2019 NOPR), it accomplishes the same goal (*i.e.,* ensuring the part two test period captures all operation associated with a defrost). Therefore, DOE is adopting this method through incorporation by reference of HRF–1–2019.

Multiple Compressor Products

For products with multiple compressors, the asynchronous cycling of the different compressors may make it more difficult to determine whether average compartment temperatures are within 0.5 °F of the average temperatures for the first part of the test (the cycle A and cycle B requirements discussed in the previous section). To address this issue, DOE proposed in the December 2019 NOPR that if a multiple compressor product cannot meet the 0.5 °F criteria, the test period shall include precool, defrost, and recovery time for the defrosted compartment, as well as sufficient dual compressor cycles to allow the length of the test period to be at least 24 hours, unless a second defrost occurs prior to completion of 24 hours, in which case the second part of the test shall include a whole number of complete primary compressor cycles comprising at least 18 hours. 84 FR 70842, 70855. Under the proposed approach, the test period would start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or freezer). *Id.* The test period would also include the target defrost and following freezer compressor cycles, ending at the end of a freezer compressor on-cycle before the next defrost occurrence (in either the refrigerator or freezer). *Id.* This proposed approach is consistent with an existing waiver test method for a multiple compressor product.[23] *Id.*

The updates in HRF–1–2019 incorporate methods for verifying steady state conditions for multiple compressor products. Section 3.28(c) of HRF–1–2019 instructs for multiple compressor products that the test shall start after a minimum 24-hour stabilization run for each temperature control setting or when the conditions of section 3.28(a) (''part A stability'') are met. This is consistent with the existing DOE steady-state condition requirement for multiple compressor products, as specified in appendix A, section 4.2.3.2.

Section 5.7.2.4 of HRF–1–2019 provides test period selection instructions for multiple compressor products in a manner consistent with the proposed approach in the December 2019 NOPR. Section 5.7.2.4 specifies that a two-part test period shall be used for multiple compressor products with automatic defrost; and for cycling compressor systems, each part shall comprise at least 24 hours, unless a defrost occurs prior to completion of 24 hours, in which case the test shall comprise at least 18 hours. Additionally, section 5.7.2.4 of HRF–1–2019 clarifies that if at least one compressor cycles on and off, test periods shall be based on compressor cycles associated with the primary compressor system (these are referred to as ''primary compressor cycles''), and if the freezer compressor cycles on and off, it shall be the primary compressor system.

AHAM encouraged DOE to adopt the provisions in HRF–1–2019 in order to improve the clarity of the testing instruction for multiple compressor products. (AHAM, No. 18, pp. 9–10)

The new sections in HRF–1–2019 are generally consistent with DOE's existing approach and the provisions included in an existing waiver.

In the December 2019 NOPR, DOE had also proposed regulatory text that would allow for considering multiple compressor cycles if individual cycles never meet the existing temperature criteria for test period part two, similar to the approach described in the previous irregular compressor cycling section. *See* 84 FR 70842, 70871. However, the irregular compressor cycling issue is addressed by the existing test procedure waiver provisions, which are incorporated into HRF–1–2019, and does not require separate consideration in the test period instructions.

Accordingly, DOE is adopting the multiple compressor test period and stability provisions through incorporation by reference of HRF–1–2019.

*F. Defrost Energy Consumption*

In addition to the changes discussed in section III.B.2 of this final rule, HRF–1–2019 also includes a substantial revision to the two-part energy use equations currently used to account for defrost energy consumption for long-time automatic defrost control, variable defrost control, and multiple defrost types in sections 5.8.2.1.2, 5.8.2.1.3, and 5.8.2.1.6, respectively of HRF–1–2019. As stated in AHAM's comments in response to the December 2019 NOPR, this change to the two-part energy use equations is the one non-editorial change incorporated in the published HRF–1–2019 compared to the public draft for review as referenced in the December 2019 NOPR. (AHAM, No. 18 at pp. 2–3)

[23] In the notice granting the waiver, DOE determined that the specified multiple-compressor models would not be able to reach the temperature stability conditions specified in Appendix A. 80 FR 7851, 7853. (See case number RF–042) On November 18, 2020, DOE extended the waiver to another GEA multiple-compressor combination cooler refrigeration product basic model to address the same issue of determining stability. 85 FR 73466. (*See* case number 2020–007).

The updated two-part equation determines the defrost energy consumption based on the compressor run-time between defrost periods and the compressor run-time ratio as measured during testing. The methodology currently in appendices A and B assumes a compressor run-time ratio of 50 percent, or, 12 hours per day.

In response to the December 2019 NOPR, AHAM stated that using the actual measured compressor run-time ratio in the equation improves the reproducibility of the energy test procedure by harmonizing the two methods (defrost-to-defrost method and two-part method) for testing long time automatic defrost models. AHAM commented that this is a significant improvement on the current DOE equation without introducing additional test burden, as it only changes the way the data collected under the current method is used. (AHAM, No. 18, pp. 2–3)

AHAM acknowledged that this change would result in increased energy use ratings for certain products. AHAM collected data from manufacturers to estimate the impact of this change on the energy use measurement for models in product classes 3, 4, 5, 7, and 9, and suggested corresponding changes to DOE's energy conservation standards for these product classes. AHAM noted that its recommendations were based on data from both minimally compliant and ENERGY STAR rated products, as well as both variable speed compressor models and single speed compressor models. AHAM indicated that the change in the equation impacts ratings for variable speed compressor models and single speed compressor models differently. (AHAM, No. 28, p. 1–4) A part of AHAM's data summary and recommendation for adjustment of the standards is reproduced in Table III.3.

TABLE III.3—SUMMARY OF AHAM ENERGY USE IMPACTS BASED ON TWO-PART EQUATION UPDATE

| | Impact on annual energy usage rating | | | |
|---|---|---|---|---|
| | Top-mount refrigerator-freezers (product class 3) (%) | Bottom-mount refrigerator-freezers (product class 5) (%) | Side-mount refrigerator-freezers (product classes 4 & 7) (%) | Upright freezers (product class 9) (%) |
| Minimum | −1.04 | −1.37 | −0.33 | 0.00 |
| Maximum | 1.59 | 5.38 | 3.27 | 3.79 |
| Mean | 0.34 | 0.76 | 1.19 | 1.83 |
| AHAM Recommendation for Adjustment to Energy Conservation Standards | 0.00 | 2.50 | 1.50 | 2.50 |

Samsung requested that DOE maintain the reference to the equation in AHAM HRF–1–2016, as proposed in the December 2019 NOPR, and not update it with the equation in AHAM HRF–1–2019. Samsung commented that it had informed AHAM of its findings that the updated energy consumption equation for variable defrost systems in HRF–1–2019 is technically incorrect and fails to accurately measure the defrost energy consumption of refrigerators with variable defrost systems, which in turn would result in higher defrost energy estimates for refrigerators that have variable speed compressors and lower defrost energy estimates for defrost systems using single speed compressors. (Samsung, No. 24, pp. 3–4)

Samsung asserted that the equation in HRF–1–2019 is technically incorrect because, unlike long-time automatic defrost control algorithms, variable defrost control algorithms utilize a variety of parameters in order to determine the timing of the next defrost sequence, including: Compressor run time, number of door openings, previous defrost length, room humidity, *etc.* Samsung stated that a long-time automatic defrost control algorithm determines the timing of the next defrost sequence simply based on the compressor time elapsed, so it is appropriate to use an observed compressor run-time to predict the number of defrosts per day if this is the control algorithm. Samsung stated that the new HRF–1–2019 equation assumes that the number of defrosts per day using a variable defrost control algorithm is similarly dependent upon only the compressor time elapsed, which Samsung claims is not true for most variable defrost control algorithms. Samsung additionally showed that this calculation method benefits cycling single-speed compressor systems over variable-speed compressor systems. (Samsung, No. 24, pp. 4–8)

DOE agrees that the premise of the updated equation, which would rely on test data rather than an assumption, would appear to improve representativeness of the test procedure. However, DOE also acknowledges Samsung's concern that variable defrost frequency is determined not only by compressor run-time, and thus the updated equation may not be representative for such products.

Furthermore, DOE notes that section 5.8.2.1.5 of HRF–1–2019, which details the two-part energy use calculation for multiple-compressor products with automatic defrost, still maintains an assumption of 50 percent run-time ratio.

Thus, using the HRF–1–2019 updated equation for single-compressor products would cause a discrepancy between the calculations for single-compressor and multiple-compressor products.

As stated in AHAM's comments, the average overall impact of the calculation update included in HRF–1–2019 is expected to be small (2.5% or less for the impacted product classes). Given the small expected impact on measured energy use but significant questions regarding representativeness, as indicated in Samsung's comments, DOE is not incorporating this calculation update in this final rule. DOE is specifying in section 5.3 of both appendices A and B that the existing calculations be used in place of the equations in sections 5.8.2.1.2 through 5.8.2.1.6 of HRF–1–2019. Maintaining the existing calculations is consistent with the approach as proposed in the December 2019 NOPR. The current DOE test procedures do not include provisions for calculating the two-part energy use for freezers with multiple compressors or for freezers with multiple defrost cycle types, and DOE is not aware of any such freezer products available on the market at this time. Therefore, DOE is maintaining the existing approach and not including provisions for multiple compressors or multiple defrost cycle types in its amendments to appendix B (consistent with the approach as proposed in the December 2019 NOPR).

HRF–1–2019 additionally includes updated provisions for the valid range of $CT_L$ and $CT_M$ values (as described in the following paragraph), which are used for the calculation of CT, the compressor-on time between defrosts.

In both appendices A and B, the $CT_L$ value is designated as the shortest compressor run-time between defrosts

used in the variable defrost control algorithm (greater than or equal to 6 but less than or equal to 12 hours), or the shortest compressor run time between defrosts observed for the test (if it is shorter than the shortest run time used in the control algorithm and is greater than 6 hours), or 6 hours (if the shortest observed run time is less than 6 hours). (See section 5.2.1.3 of appendix A and section 5.2.1.3 of appendix B) In the same section of both appendices, the $CT_M$ value is designated as the maximum compressor run-time between defrosts in hours (greater than $CT_L$ but not more than 96 hours). (*Id.*) Hence, the current test procedures require that $6 < CT_L < 12$ and $CT_L < CT_M \leq 96$, in hours.

By contrast, section 5.8.2.1.3 of HRF–1–2019 provides that $0 < CT_L < CT_M \leq 96$, in hours. DOE notes that this allows $CT_L$ values less than 6 hours, potentially resulting in adjustments to the CT values currently used in the energy use equations for current products. For example, if the shortest compressor run-time between defrosts observed for the test is 4 hours, the $CT_L$ value used in the current DOE test procedure would be 6 hours, whereas the $CT_L$ value used in HRF–1–2019 would be 4 hours. Such a change would typically increase the rated annual energy use of the product by increasing the estimated defrost energy use contribution in overall energy use.

At this time, DOE does not have information to indicate to what extent manufacturer variable defrost control algorithms incorporate $CT_L$ parameters less than 6 hours. As a result, DOE cannot estimate to what extent current products would be affected by this change. Also, absent information as to whether manufacturer defrost control algorithms incorporate $CT_L$ parameters less than 6 hours, DOE cannot determine whether the current approach is less representative than the approach taken in HRF–1–2019. Given the lack of information on the extent to which the industry update impacts product ratings and test procedure representativeness, DOE is not adopting the new provisions for $CT_L$ and $CT_M$ in HRF–1–2019. Instead, DOE is maintaining the current provisions, which specify that $6 < CT_L < 12$ and $CT_L < CT_M \leq 96$, in hours, consistent with the approach as proposed in the December 2019 NOPR.

### *G. Icemaking Energy Consumption*

The current DOE test procedures for refrigeration products utilize a standardized energy adder of 84 kWh per year to account for the energy consumption of automatic icemakers. This adder approach was originally proposed in 2010 based on data available at that time and is based on data from AHAM [24] suggesting an icemaking efficiency of 0.128 kWh/lb [25] and an assumed ice consumption (*i.e.* icemaking demand) of 1.8 lbs/day (0.128 kWh/lb × 1.8 lbs/day × 365 days/yr = 84 kWh/yr). 75 FR 29824 (May 27, 2010). As discussed in the December 2019 NOPR, since the establishment of the 84 kWh per year adder, DOE has received information indicating that the actual icemaking demand is considerably lower than the 1.8 lbs/day assumed as the basis for the 84 kWh per year adder. 84 FR 70842, 70848. DOE has also considered incorporation of a test method to directly measure the icemaking energy consumption. 79 FR 22319, 22341–22342.

In the June 2017 RFI, DOE presented the history of the icemaking energy use adder, including all data gathered to that point and the potential consideration of an active icemaking energy use test procedure, and again requested comment on how its test procedures should account for automatic icemaking energy consumption and on the availability of any additional consumer use data. 82 FR 29780, 29782–29783.

Based on comments received in response to the June 2017 RFI, DOE proposed in the December 2019 NOPR that the icemaker energy use adder be based on a lower value of daily ice consumption as identified through data submitted by commenters. 84 FR 70842, 70849. Specifically, DOE proposed an amended icemaking energy use adder of 28 kWh per year based on an ice consumption value of 0.59 lbs/day, which represented the median ice consumption from the provided data. *Id.* DOE also initially determined that based on the reduced daily ice consumption, the benefits of any laboratory-based test procedure to measure icemaking energy use would likely not outweigh the burdens associated with this testing (an estimated 50 percent increase in total testing time). *Id.* DOE also proposed that the same fixed adder would apply for any products with automatic icemaking, regardless of the number of icemakers in the product. 84 FR 70842, 70850.

#### 1. Icemaking Energy Use Adder

In response to the December 2019 NOPR, DOE received multiple comments on the appropriateness of the proposals, which are addressed in the following discussion.

NEEA, the CA IOUs, and CEC did not support DOE's proposed reduction to 28 kWh per year, asserting that the median ice usage of 0.59 lbs/day is too low to use for the icemaker adder. (NEEA, No. 26, pp. 5–6; CA IOUs, No. 23, p. 2; CEC, No. 20, p. 2) Instead, NEEA and the CA IOUs recommended that DOE account for the higher-volume ice users found in the study by using the mean ice usage of 0.83 lbs/day. (CA IOUs, No. 23, p. 2; NEEA, No. 26, pp. 5–6) CEC additionally commented that DOE's proposal does not differentiate between through-the-door and in-freezer icemaker models, and CEC stated that studies showed differences in rates of ice use. (CEC, No. 20, p. 2)

At the December 2019 NOPR Public Meeting, GEA stated that the median value of 0.59 lbs/day assumed by DOE is based on a sample of over 5,000 data points from across the 48 contiguous states, and that this value was representative because the distribution of icemaking values was skewed towards a larger population of lower values. GEA also stated that its results were consistent with the studies by NEEA. (GEA, Public Meeting Transcript, No. 11, p. 35) AHAM reiterated its comments on the previous rulemaking and supported DOE's proposal to amend the adder to 28 kWh per year. Similar to the comment by GEA, AHAM commented that the data from the NEEA and AHAM field use studies show that about 60–70% of users use less ice than the average, and that therefore the median ice usage rate is a better value to use for the adder. (AHAM, No. 18, p. 5)

AHAM also stated that it has no indication that consumer ice consumption rates have changed since 2014, so the previous field use studies still support a lower adder. AHAM also agreed with DOE's proposal to use the same fixed icemaker adder for all products with icemakers regardless of the number of icemakers. AHAM stated its understanding that consumer ice consumption rates do not change based on the number of automatic icemakers their product has. (AHAM, No. 18, p. 6)

The comments received in response to the December 2019 NOPR refer to the same data regarding ice consumption that DOE used to develop its initial determination in the December 2019 NOPR. Absent any new data, DOE is maintaining its preliminary conclusion from the December 2019 NOPR that the median ice consumption rate, 0.59 lbs/day, is appropriate for the calculation of the icemaking energy use adder because of the prevalence of lower ice consumption rates found in field use studies (*i.e.,* the median provides a more

[24] The AHAM data consisted of 51 samples from a variety of product classes and icemaker configurations.

[25] The average icemaking efficiency was originally reported as 128 Wh per lb of ice produced.

representative value of consumer use than the mean).

In addition to discussing the representative daily ice use rate, commenters also discussed icemaking efficiency and other factors that may influence the corresponding energy use of an automatic icemaker.

The CA IOUs and CEC both stated that the current ice maker energy use adder assumed a relatively high efficiency ice maker based on a 2011 study by the National Institute of Standards and Technology (''NIST'') that showed a range of efficiencies in measured icemakers, including units using over twice as much energy as assumed in DOE's adder. (CA IOUs, No. 23, pp. 2–3; CEC, No. 20, p. 2) The CA IOUs commented that should DOE decide to keep a no-test adder, they would support an adder in the range of 43 to 50 kWh per year, based on the average ice making consumption of 0.83 lbs/day with an ice making efficiency of 0.142 to 0.165 kWh per lb of ice, which CA IOUs characterized as being in alignment with the ice making efficiencies found in the NOPR published on July 10, 2013 (See 78 FR 41610). (CA IOUs, No. 23, pp. 2–3) NEEA supported an adder of 55 kWh per year based on 0.83 lbs/day, but provided additional test data for six products for which the average energy consumption was 35.53 kWh per year based on the existing assumption of an icemaking rate of 0.59 lbs/day. (NEEA, No. 26, pp. 5–6)

AHAM, Sub Zero, and FSI recommended DOE incorporate the 28 kWh per year adder as specified in HRF–1–2019. (Sub Zero, No. 17, p. 2; AHAM, No. 18, p. 4–5; FSI, No. 21, p.1)

DOE revisited the icemaker energy use data provided by AHAM,[26] applying an updated assumption of daily ice consumption of 0.59 lbs/day (in place of AHAM's original assumption of 1.8 lbs/day), which produced a revised estimate of annual energy use of 27.6 kWh/year (0.128 kWh/lb × 0.59 lbs/day × 365 days/yr = 27.6 kWh/yr). As noted, the AHAM data consisted of 51 data samples from a variety of product classes and icemaker configurations. Combining this revised estimate based on AHAM's 51 data points with the 6 additional sample points provided by NEEA results in an average energy use of 28.4 kWh/year across all 57 data points (using the current estimated icemaking rate of 0.59 lbs/day). This combined set of available data supports the 28 kWh per year adder as proposed in the December 2019 NOPR.

Based on DOE's consideration of the data submitted by stakeholders and for the reasons discussed, DOE is adopting an icemaker adder value of 28 kWh per year by referencing HRF–1–2019.

2. Icemaking Energy Test Method Impacts

Certain commenters urged DOE to consider using a test to directly determine the icemaking energy use instead of using a fixed energy adder.

CEC opposed reducing the adder based on human behavior rather than testing the efficiency of the ice maker. CEC claimed that by lowering the icemaking energy use adder, DOE is artificially lowering the efficiency of the entire refrigerator, which will negatively impact consumers' ability to choose efficient refrigeration products. (CEC, No. 20, p. 2)

NEEA, the CA IOUs, and CEC all commented that a no-test adder will limit innovation in efficient automatic ice making techniques and may lead to less efficient operating units. These parties recommended that DOE reconsider a test method to directly measure the energy consumption associated with automatic icemaking rather than permanently use an energy adder. (NEEA, No. 26, p. 6; CA IOUs, No. 23, p. 3; CEC, No. 20, pp. 2–3) The CA IOUs reiterated that the fixed adder was not intended to be a permanent measure, and the original product testing did not constitute a representative sample of products that would justify a permanent simplification to persist in the test procedure. (CA IOUs, No. 23, p. 3)

AHAM commented that because ice consumption is so low, there is limited opportunity for energy savings, and the icemaker energy use is a small percent (2.5–4.5%) of the rated energy use of typical refrigeration products. Furthermore, AHAM stated that much of the energy use associated with icemaking comes from the thermodynamic energy required for freezing 90 °F water. According to AHAM, there are limited icemaker technologies that could be employed to improve icemaker energy use, and some could sacrifice consumer utility (*e.g.* speed of ice production) in order to improve efficiency. AHAM stated that manufacturers are not likely to make a trade-off compromising consumer utility (and, under EPCA, must not be required to) in pursuit of energy efficiency. (AHAM, No. 18, p. 5)

NEEA also commented that the energy used by the ice maker appears to be determined by the time required to produce the ice, and that faster production requires a lower freezer compartment temperature and corresponding increase in compressor operation time or speed. (NEEA, No. 26, p. 5)

In addition to these potential efficiency impacts, commenters also discussed costs directly associated with a potential test method for measuring ice maker energy use.

CEC recommended that DOE incorporate the icemaker energy test included in IEC 62552, indicating that manufacturers have not found the costs of this test to be unduly burdensome. CEC asserted that the explicit instructions for automatic ice makers in IEC 62552 would guarantee repeatability of the test, and manufacturers would not incur an additional burden to separately test the efficiency of the automatic ice maker when present. According to CEC, the IEC 62552 test provides a better representation of real-world conditions, lowers the testing burden on manufacturers, and is more likely to lead to a measurement of a representative average use cycle. (CEC, No. 20, pp. 3–4)

NEEA commented that a test to measure the energy use of an icemaker should be optional. NEEA suggested that DOE provide the option of allowing manufacturers to test an ice maker to the NIST test procedure in place of the default value of the icemaker adder.[27] (NEEA, No. 26, p. 6)

AHAM commented that the burden of testing icemaker energy use is high, resulting in a 50% increase in test time and a subsequent 25% decrease in test capacity. AHAM stated that depending on the test facility, the increased test time may also require the addition of test rooms in order to recoup that lost capacity. AHAM asserted that this was not cost-effective, specifying that the cost to operate an icemaker for a year is low, about $2.92 per year based on a rate of 10.65¢ per kWh. (AHAM, No. 18, pp. 4–6) Sub Zero similarly commented that an icemaker energy test was not justified for such a low contribution to overall product energy use, and Sub

[26] As part of the development of the April 2014 Final Rule, AHAM presented data derived from three consumer surveys and three separate field tests which indicated a representative icemaking energy use adder of 84 kWh per year based on a production rate of 1.8 lbs/day. This data summary, ''AHAM Update to DOE on Status of Ice Maker Energy Test Procedure—November 19, 2009'' is filed under Docket No. EERE–2012–BT–TP–0016 and can be found online at *https://www.regulations.gov/docket/EERE-2012-BT-TP-0016/document.*

[27] NEEA did not specify the NIST test procedure referenced in its comments. DOE is aware of a 2012 publication from NIST titled *Development of a Method to Measure the Energy Consumption of Automatic Icemakers in Domestic Refrigerators with Single Speed Compressors,* as discussed further in this section.

Zero supported the amended value of the adder, stating that it is representative of field use data. (Sub Zero, No. 17, p. 2) FSI strongly supported the continuation of using an adder instead of requiring testing, stating that many smaller businesses do not have the means to fix water temperature and pressure for consistent icemaker energy test results and would have to outsource these tests at great cost. (FSI, No. 21, p. 1)

DOE generally maintains its preliminary determination made in the December 2019 NOPR that, based on more recent and complete data suggesting a lower rate of daily ice consumption than had been previously assumed, the benefits of any laboratory-based test procedure to measure icemaking energy use would not outweigh the burdens associated with this testing (an estimated 50 percent increase in total testing time).

In its review of the IEC 62552 test method for measuring the energy used to make ice, DOE notes that Annex F.3 of IEC 62552–3:2015 specifies: (1) The test is usually undertaken adjacent to (following or prior to) a normal energy consumption test, and (2) the test is conducted at ambient temperatures of 16 °C and 32 °C. Conducting an icemaker test at two ambient temperatures would result in a significant increase in test time in comparison to the current DOE test procedure.

Furthermore, DOE found the IEC 62552 method to be limited in its applicability to refrigeration products. The method in Annex F.3 of IEC 62552–3:2015 is specifically applicable only to tank-type automatic icemakers, in which fresh water is used from an internal tank that is manually filled by the user. IEC 62552:2015 does not provide a test procedure for products that are connected to a mains water supply for automatic icemaking, which represents nearly all automatic icemaking models available on the market.

The NIST method,[28] which is similar to that used by AHAM to collect data on icemaker energy use, relies upon additional measurements of ice production rates and covers products that connect to a mains water supply. However, this test would represent an estimated 50% increase in test duration for products with automatic icemakers.

DOE appreciates the comprehensive information provided by interested parties on this topic. DOE has reviewed the additional test method options but has concluded that the adoption of a 28 kWh per year adder through the incorporation by reference of HRF–1–2019 is justified. DOE has determined that based on the currently established methods for measuring icemaking energy consumption, adopting a test method to determine icemaking energy use would significantly increase test burden with little potential to improve representativeness of measured energy use. Thus, DOE concludes that a test procedure incorporating the fixed energy use adder of 28 kWh per year results in a measure of annual energy consumption that is representative of actual consumer use while not being unduly burdensome to conduct.

For the aforementioned reasons, in this final rule, DOE is adopting the 28 kWh per year icemaker adder through incorporation by reference of HRF–1–2019, which includes in section 5.9 a constant adder of 0.0767 kWh per cycle (*i.e.,* per day) for products with automatic icemakers.

3. Amended Energy Conservation Standards

Under 42 U.S.C. 6293(e)(1), DOE is required to determine whether an amended test procedure will alter the measured energy use of any covered product. If an amended test procedure does alter measured energy use, DOE is required to make a corresponding adjustment to the applicable energy conservation standard to ensure that minimally-compliant covered products remain compliant. (42 U.S.C. 6293(e)(2)) In the December 2019 NOPR, DOE stated that because the energy adder for automatic icemakers would be reduced by 56 kWh per year (the difference between the current value of 84 kWh per year and the proposed value of 28 kWh per year), the measured energy use of minimally-compliant products with automatic icemakers would also decrease by 56 kWh per year. 84 FR 70842, 70850. As a result, DOE proposed in the December 2019 NOPR to amend the energy conservation standards for refrigeration products with automatic icemakers to reflect a reduction of 56 kWh per year in the equations for maximum energy use. 84 FR 70842, 70850–70851. DOE also proposed a one-year lead-time period for the required use of the revised icemaker energy use adder and corresponding amended energy conservation standards to reduce the burden on manufacturers of re-certifying and re-labeling their products. 84 FR 70842, 70850–70851.

In response to the December 2019 NOPR, AHAM opposed a one-year lead time to implement the change to the icemaker adder, stating that it could lead to stranded investments and additional costs for manufacturers to re-certify products and change EnergyGuide labels. AHAM recommended that DOE not require compliance until the compliance date of the next amended standards. AHAM asserted that this would be consistent with DOE's previous rulemaking approach and makes sense to address any impacts on measured energy. (AHAM, No. 18, p. 6–7) Sub Zero stated that the amended icemaking energy use adder would be best implemented on the effective date of the next standard. (Sub Zero, No. 17, p. 2) Whirlpool commented that any modifications to the icemaker energy fixed adder should not be adopted before the compliance date for the next amended energy conservation standard. (Whirlpool, No. 19, p. 1)

In response to the December 2019 NOPR, FSI encouraged DOE to make no administrative changes that do not directly benefit the environment or energy consumption. FSI asserted that changing the energy use adder for icemakers in DOE's energy conservation standards would require companies to spend time making changes to certifications for no real change or benefit. FSI suggested that amendments of this nature could be deferred until after recovery from the COVID–19 crisis. (FSI, No. 21, p. 1)

DOE recognizes the concerns raised by the commenters that the proposal would create burden associated with this updated calculation, including costs to re-certify products, re-label products, and update marketing materials. In consideration of these comments, DOE will not require testing with the amended icemaking energy use adder until the compliance dates of the next amended energy conservation standards for refrigeration products.[29] Newly amended section 5.3 of both appendices A and B specifies an exception to the application of Section 5.8.2, *Energy Consumption,* of HRF–1–

[28] DOE reviewed the publication *Development of a Method to Measure the Energy Consumption of Automatic Icemakers in Domestic Refrigerators with Single Speed Compressors,* by David A. Yashar (September 18, 2012). Available online at *https://nvlpubs.nist.gov/nistpubs/TechnicalNotes/NIST.TN.1759.pdf.*

[29] DOE is addressing Energy Conservation Standards for Consumer Refrigerators, Refrigerator-Freezers, and Freezers in Docket No. EERE–2017–BT–STD–0003 (maintained at *https://www.regulations.gov/docket/EERE-2017-BT-STD-0003*). DOE is separately addressing Energy Conservation Standards for Miscellaneous Refrigeration Products in Docket No. EERE–2020–BT–STD–0039 (maintained at *https://www.regulations.gov/docket/EERE-2020-BT-STD-0039*).

2019 to substitute an icemaking energy use adder of 0.23 kWh/cycle (*i.e.,* 84 kWh/year) to demonstrate compliance with the existing energy conservation standards for refrigeration products at 10 CFR 430.32(a) and (aa). As such, DOE is not amending energy conservation standards in this final rule, and manufacturers will not be required to update certification and labeling of products with automatic icemakers as a result of this final rule.

*H. Features Not Directly Addressed in Appendix A or Appendix B*

The current test procedures in appendices A and B do not include provisions specific to products with door-in-door designs (or other features that reduce the thermal load on the product by limiting the need for door openings) and smart functions such as display screens and network-connected functionality.[30] The following sections discuss these features.

1. Door-in-Door Designs

As discussed in section III.B of this final rule, the current DOE test procedures for refrigeration products represent operation in typical room conditions with door openings by testing at an elevated ambient temperature with no door openings. (10 CFR 430.23(a)(7)) The increased thermal load from the elevated ambient temperature represents the thermal load associated with door openings—as warmer ambient air mixes with the refrigerated air inside the cabinet—as well as the loading of warmer items in the cabinet. This approach is maintained in the updated industry test procedure, HRF–1–2019, which DOE is incorporating by reference in this final rule.

As discussed in the June 2017 RFI, DOE is aware of certain products available on the market that incorporate a door-in-door design, which could reduce energy consumption during actual use by minimizing the amount of cool cabinet air escaping to the room and being replaced by warmer ambient air during door openings. 82 FR 29780, 29782.

In the December 2019 NOPR, DOE noted that door-in-door features, and other systems such as camera display systems (which show the user the interior of the cabinet without needing to open the door), have some potential to reduce energy consumption associated with door openings for these products. 84 FR 70842, 70855–70856. However, DOE initially determined that there was not sufficient data regarding consumer usage patterns of these features to warrant revisions to the test procedures and did not propose amendments to address their use in the December 2019 NOPR. *Id.*

In response to the December 2019 NOPR, Samsung commented that more consumer use data must be collected to fully understand user behavior before considering such changes in the test procedures. Samsung recommended that separate product classes and energy conservation standard levels be considered based on additional door designs. (Samsung, No. 24, p. 4) AHAM agreed with DOE's proposed approach not to amend the test procedure to account for newly developing features such as door-in-door designs, display screens, and connected functions without national, statistically significant, field use data on consumer use. AHAM commented that these features are still developing, as are consumers' use and understanding of them. (AHAM, No. 18, p. 10)

Specifically, AHAM indicated that it does not currently have data regarding consumer use of the door-in-door feature or corresponding energy impacts of different types of door openings; and that guesses, estimations, or unsupported assumptions are not enough to justify test procedure amendments as per the Data Quality Act.[31] AHAM reiterated that it would oppose any proposed change that would alter the closed-door test, which it stated is based on data regarding ambient conditions and door openings, and because door openings are difficult to control and introduce significant variation. AHAM commented that when statistically significant consumer data from field studies are available, DOE should evaluate possible calculation or other approaches that do not add test burden or change the representativeness, repeatability, or reproducibility of the test. (AHAM, No. 18, p. 10)

AHAM and Sub Zero also stated that regulating such features now would likely stifle innovation and could in some cases prevent manufacturers from including such features. (AHAM, No. 18, p. 10; Sub Zero, No. 17, p. 2) Sub Zero commented that these features may offer a consumer utility, and there is no data at present to determine if there is an appreciable energy impact. Sub Zero suggested that DOE may want to revisit this issue when data is available in the future, but HRF–1–2019 currently provides appropriate instruction on how these features are to be tested. (Sub Zero, No. 17, p. 2)

DOE does not currently have consumer usage data to support amendments to the test procedures for refrigeration products with door-in-door or camera display designs, which may reduce door openings. In order to limit testing burden and avoid affecting the representativeness, repeatability, or reproducibility of the test procedure, DOE is maintaining the closed-door methodology as specified in HRF–1–2019 and consistent with the approach proposed in the December 2019 NOPR. DOE would consider whether separate product classes and energy conservation standards would be appropriate for products with special door designs as part of an energy conservation standards rulemaking.

2. Display Screens, Connected Functions, and Demand Response

Refrigeration products that include user control panels or displays located on the front of the product are currently available on the market. Many products incorporating these more advanced user interfaces also include internet connections to allow for additional functions, which can control the product's operation and provide additional attributes, such as television or internet access. These attributes can operate with many different control schemes, including activation by proximity sensors.

The current DOE test procedures require that refrigeration products with a communication module for demand-response functions be tested with the communication module in the ''as shipped'' configuration. Section 2.10 of appendix A and section 2.8 of appendix B. Additionally, the current DOE test procedures, through reference to HRF–1–2008, require testing with customer-accessible features not required for normal operation and which are electrically powered, manually

[30] The current DOE test procedures require that consumer refrigeration products that have a communication module specifically for demand-response functions be tested with the communication module in the ''as shipped'' configuration. Section 2.10 of appendix A and section 2.8 of appendix B. Section 5.5.2(g) of HRF–1–2008, which is incorporated by reference into the existing DOE test procedures, requires testing with customer-accessible features not required for normal operation and which are electrically powered, manually initiated, and manually terminated—which typically includes any connected functions other than demand response—set at their lowest energy usage positions when adjustment is provided (*i.e.,* typically the off position).

[31] DOE understands AHAM's reference to the ''Data Quality Act'' to refer to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, 114 Stat. 2763) and the associated implementing guidelines. DOE's implementing guidelines are available at *https://www.energy.gov/cio/downloads/2019-final-updated-version-doe-information-quality-guidelines.*

initiated, and manually terminated, set at their lowest energy usage positions when adjustment is provided.

In the December 2019 NOPR, DOE acknowledged that some consumers will use connected functions if offered on a product; however, connected products are in the early stages of development and meaningful data on consumer use for connected functions or display screens are currently unavailable. 84 FR 70842, 70856. DOE stated that it does not want to limit innovation or hinder manufacturers from offering these functions to consumers or impede the ability to provide potential utility that these functions may offer. *Id.* Additionally, DOE noted that connected functions vary by model, and that further specifying a test to reflect the energy consumption of the various connected functions would likely introduce test variability and increase test burden. *Id.* For these reasons, DOE did not propose any amendments to the existing test procedure approach to address connected functions. *Id.*

In the December 2019 NOPR, DOE did propose to remove sections 2.10 of Appendix A and 2.8 of Appendix B, which state that products ''that have a communication module for demand response functions that is located within the cabinet shall be tested with the communication module in the configuration set at the factory just before shipping,'' which would result in such communication modules being set to their lowest energy usage positions (off). 84 FR 70842, 70856–70857. This proposal was intended to maintain consistency between the specifications for demand response functions and other features not required for maintaining compartment temperatures per AHAM HRF–1–2016. *Id.*

In response to the December 2019 NOPR, the Joint Commenters encouraged DOE to investigate the energy consumption of display screens and connected functions and how consumers use these functions so that they can be captured in the test procedure in the future. The Joint Commenters stated that DOE should maintain the existing approach of testing demand-response function communication modules in the as-shipped configuration and adopt a similar approach for other consumer-accessible functions. The Joint Commenters claimed that with the amendment proposed in the December 2019 NOPR, manufacturers may ship products with demand-response function communication modules in a position other than off, and yet that energy use would not be captured in the product's rating. The Joint Commenters stated that consumers could unknowingly end up paying more to operate the product without receiving any benefit from the added functionality (*e.g.,* if the consumer's electric utility does not offer any demand response program). The Joint Commenters added that by encouraging (but not requiring) manufacturers to ship modules in the off position, the existing approach does not impede innovation, and that the same would apply for other consumer-accessible functions such as display screens. (Joint Commenters, No. 22, p. 2–3)

NEEA recommended that DOE include network power consumption and connected function modes in the test procedures by connecting the appliance to a network for testing as recommended for normal use by the supplier where such smart functions are provided. According to NEEA, network connected devices with display panels are increasing in usage. Data presented by NEEA showed that 75% of the ENERGY STAR refrigerator sales from 2015 to 2019 are bottom-mount and 9.9% of those have connected capability. NEEA stated that connected appliances offer energy savings opportunities and opportunities for grid interaction to reduce the demand on the grid. (NEEA, No. 26, p. 6)

The CA IOUs opposed DOE's proposal to set connected functionality to the ''off'' position during testing and instead recommended a method of incorporating the energy usage into the test procedures because the active-mode power mode of smart functions may meaningfully add to the unit's overall electrical load. The CA IOUs did not agree that that measurement and disclosure of smart devices could limit innovation. The CA IOUs referred to BSH's comment on the June 2017 RFI [32] as evidence that a method could be developed with low test burden and thus encouraged DOE to reconsider incorporating a method to measure networked functionality and, at the very least, test products in their ''as-shipped'' mode. (CA IOUs, No. 23, p. 3)

CEC supported the comments from the CA IOUs and recommended that standby mode and off mode of connected devices be measured, stating that such measurements are required under EPCA. According to the CA IOUs, DOE provided insufficient rationale excluding the measurement of energy consumption associated with connected functions in the test procedures. (CEC, No. 20, p. 4) The CA IOUs supported alignment with the California Energy Commission's Low Power Modes Roadmap, based on IEC Standard 62301:2011, which identifies data collection procedures for standby power draw of several products. The CA IOUs recommended that DOE should: (1) Collect data on power draw of smart functions in all operational modes, (2) isolate the power required for network connectivity in various covered smart appliances, (3) incorporate standby and off-mode energy usage into the standard metrics. The CA IOUs predicted that growth will not only occur among smart device functions for higher end products where they currently exist, but across the market, pushed in part by California Senate Bill No. 49: Clean Power, Smart Power. (CA IOUs, No. 23, pp. 3–4)

At the December 2019 NOPR Public Meeting, NRDC stated that testing connected functions in the off position—and assuming their component energy consumption is 0 kWh/yr—is not representative of actual consumer usage, and thus opposed DOE's proposed amendment. (NRDC, Public Meeting Transcript, No. 11, pp. 78 & 89)

AHAM commented that it is too soon to address display screens and connected functions given the currently limited market penetration. AHAM supported DOE's proposal to have these functions tested in their lowest energy use positions to avoid stifling innovation and reduce cumulative regulatory burden. AHAM also suggested that DOE could incorporate by reference HRF–1–2019, which requires that devices with communication modules be tested with the device on but not connected to any communication network. AHAM asserted that this approach would not impact measured energy use. (AHAM, No. 18, pp. 10–11) Whirlpool agreed that the test procedure should not be amended for features like door-in-door designs, display screens, and connected features at this time. (Whirlpool, No. 19, p. 1) Both Whirlpool and Sub Zero supported AHAM's recommendation to incorporate by reference HRF–1–2019.

[32] In response to the June 2017 RFI, BSH commented that display screens consume energy in normal use and that energy is not captured during the existing test procedure. BSH supported including some portion of the energy consumed by these features in the energy test, if they do not add burden to the test procedure. BSH noted that Appendix A refers to products with demand-response capability and recommends that the test procedure instead refer to all connected products. BSH stated that connected communication modules consume a small amount of energy and can be easily captured during the energy test. BSH recommended testing with the communication module in the on position but not connected, consistent with the European energy test. (BSH, No. 2 at p. 2)

(Whirlpool, No. 19, p. 1; Sub Zero, No. 17, p. 2)

Based on consideration of the industry test standard HRF–1–2019 and of comments received in response to the December 2019 NOPR, DOE is incorporating by reference section 5.5.2(r) of HRF–1–2019, which specifies testing units with communication modules with the communication modules on but not connected to any communication network. DOE has determined that the adopted approach provides a representative measure of the energy use during an average period of use. DOE acknowledges that manufacturers market connected functions available on refrigeration products and consumers purchasing such products will likely use the connected functions to some extent. However, the range of functions available varies by model and DOE lacks information on how consumers use such functions (*e.g.,* which connected functions consumers choose to use, how frequently consumers access such functions, *etc.*). Accordingly, DOE has determined that measuring energy consumed by the communication module rather than any specific connected function provides a representative, repeatable, and reproducible test procedure for these products. Additionally, this approach reflects current industry practice—as it is the approach specified in the industry test procedure—and therefore does not add an undue burden.

In response to AHAM's concern, the adopted procedure for testing communication modules measures energy consumed by the communication module while not connected to a network rather than the energy consumed while the unit is performing any connected functions. Therefore, the test procedure would not introduce any additional burden associated with testing multiple connected functions or modes that manufacturers may choose to introduce in products with communication modules.

With regard to comments suggesting that DOE incorporate standby and off-mode energy use into the standard metrics for refrigerators, as discussed, EPCA requires that DOE amend its test procedures for refrigeration products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*) Any such amendment must consider the most current versions of the IEC Standard 62301 and IEC Standard 62087 as applicable. (42 U.S.C. 6295(gg)(2)(A))

As described in the April 2014 Final Rule, the DOE test procedures for refrigeration products measure the energy use of these products during extended time periods that include periods when the compressor and other key components are cycled off. All of the energy these products use during the ''off cycles'' is already included in the measurements. 79 FR 22320, 22345. The approach of testing with connected functions on but not connected to a network accounts for energy consumption of such functions as part of active mode testing, and as a result, this method provides consumers with representative estimates of energy consumption. DOE reiterates its conclusion from the April 2014 Final Rule that by measuring the energy use during ''off cycles,'' the current test procedures already address EPCA's requirement to include standby mode and off mode energy consumption in the overall energy descriptor for refrigeration products. *Id.*

Through incorporation by reference of HRF–1–2019, DOE is adopting the provision in section 5.5.2(r) of HRF–1–2019, which states that units shipped with communication devices shall be tested with the communication device on but not connected to any communication network. This approach also requires testing communication modules for demand-response functions on but not connected to a network, amending the current requirements in sections 2.10 of appendix A and 2.8 of appendix B that such communication modules be tested in the as-shipped position.

DOE does not currently have test data as to the extent of energy use of connected functions. DOE did not receive such data from stakeholders. DOE is adopting the amended approach in HRF–1–2019 as it is reflective of the industry consensus for testing refrigeration products with communication modules. Absent data which would suggest otherwise, DOE agrees with AHAM's comment indicating that the HRF–1–2019 approach is not expected to impact measured energy use and thus would not impact compliance of these products. Hence DOE has also concluded that an amendment to the energy conservation standards with respect to this amendment is not necessary.

*I. Corrections*

In the December 2019 NOPR, DOE proposed several corrections to the test procedures in appendices A and B, which included amendments to improve clarity and consistency with the industry test procedure proposed to be incorporated by reference (*i.e.,* AHAM HRF–1–2016). 84 FR 70842, 70857–70858.

The inadvertent omission of calculations associated with the optional test for models with two compartments and user-operable controls according to AS/NZS 4474.1:2007 is discussed in section III.B.2 of this final rule. Similarly, the updates to Table 1 in appendices A and B, as proposed in the December 2019 NOPR, are discussed in section III.B.2 of this final rule.

In this final rule, DOE is incorporating by reference HRF–1–2019, which resolves the need to issue separate corrections regarding other issues identified in the December 2019 NOPR. Re-ordering of definitions in Appendix A is no longer necessary given the updated incorporation by reference of HRF–1–2019. Similarly, updating appendix B, as proposed, to ensure consistent terminology and instructions as appendix A is no longer necessary given that the volume instructions for both Appendices are now included by reference to HRF–1–2019. Additionally, HRF–1–2019 includes the proposed clarification to the instructions in section 3.2.1 of appendices A and B, which would have clarified the instructions regarding electronic control settings for the median test.

DOE identified one additional error, which is corrected in this final rule. In 10 CFR 429.14(d)(1), the instructions regarding compartment volumes used to determine product category refer to 10 CFR 429.72(d) rather than (c). 10 CFR 429.72(d) provides the alternative method for determining volume in miscellaneous refrigeration products. 10 CFR 429.72(c) provides this method for refrigerators, refrigerator-freezers, and freezers. DOE is amending 10 CFR 429.14(d)(1) to correctly refer to 10 CFR 429.72(c).

*J. Effective Date, Compliance Date, and Waivers*

The effective date for the adopted test procedure amendments will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product

labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

As discussed in section III.G.3, compliance with the amended icemaking energy use adder for products with one or more automatic icemakers will be required for representations of energy use on or after the compliance date of any amended energy conservation standards for refrigeration products.

Upon the compliance date of test procedure provisions in this final rule, any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. (10 CFR 430.27(h)(3)) Recipients of any such waivers are required to test the products subject to the waiver according to the amended test procedure as of the compliance date of the amended test procedure. The amendments adopted in this document pertain to issues addressed by a waiver granted to GEA (case nos. RF–042 and 2020–007). Per 10 CFR 430.27(l), the publication of this final rule eliminates the need for the continuation of granted waivers. As discussed previously, DOE is not amending the test procedure to address the waiver granted to Liebherr (case no. RF–035), as the products for which the waiver was required are no longer available and the waiver is no longer necessary. The publication of this final rule terminates this waiver consistent with 10 CFR 430.27(h)(3) and 10 CFR 430.27(l). Under 10 CFR 430.27(h)(3), the waiver automatically terminates on the date on which use of the test procedure is required to demonstrate compliance.

*K. Test Procedure Costs*

In this document, DOE amends the existing test procedures for refrigeration products by incorporating by reference the current version of an industry standard, with minor modifications as discussed in the previous sections of this final rule. This updated reference results in the following substantive changes compared to the existing test approach: (1) Clarifying test setup provisions; (2) specifying certain test condition measurements and applicability to data recording periods; (3) allowing for stabilization data to also serve as test data for certain product types; (4) specifying stabilization requirements for products not able to meet the existing requirements; (5) revising the automatic icemaking energy consumption adder; and (6) requiring connected function communication modules to be on, but not connected to a network, for testing.

DOE's analysis of these amendments indicates a resulting net cost savings to manufacturers. Further discussion of the cost impacts of the test procedure amendments are presented in the following paragraphs.

1. Amendment Regarding the Stabilization and Test Periods

DOE is adopting the provisions in HRF–1–2019 to combine the stabilization period with the test period for certain models of refrigeration products. This would decrease test burden by shortening the test duration for any model with stabilization currently determined according to sections 2.9(a) of appendix A or 2.7(a) of appendix B and with non-automatic defrost, or that would be tested to using the two-part test period. This amendment would apply to all refrigeration products.

Based on review of the CCMS, DOE has identified 3,618 models of refrigerators, refrigerator-freezers, and freezers, and 583 models of MREFs that would be impacted by this amendment.

DOE expects that this amendment would decrease test duration by at least 6 hours for these models (reflecting the 3-hour minimum test period duration at two temperature settings) and up to 48 hours (reflecting 24-hour test periods at each setting). Based on an estimated decreased test duration of at least 6 hours (*i.e.,* a decrease in test time of greater than ten percent), DOE assumed a cost savings of approximately ten percent (*i.e.,* $500 per test).[33] Additionally, based on data from DOE's Compliance Certification Database, DOE anticipates that manufacturers would replace or modify existing models every 3.5 years. Therefore, on average, refrigerator, refrigerator-freezer, and freezer and MREF manufacturers would introduce approximately 1,200 new or modified covered models each year that would use these shorter overall testing periods. Because DOE requires manufacturers to test at least two units per model, manufacturers would on average conduct 2,400 tests annually using these shorter overall testing periods. Using these estimates, DOE anticipates industry cost savings of approximately $1,200,000 per year for refrigeration product manufacturers.

DOE expects that the amendment would not impact the representations of energy efficiency or energy use for refrigeration products currently on the market. Manufacturers would be able to rely on data generated under the current test procedure. As such, manufacturers would not be required to retest refrigeration products as a result of DOE's adoption of the amendment to the test procedure stabilization period.

2. Amendment Regarding Energy Use Associated With Automatic Icemaking

DOE is amending the automatic icemaker energy use adder in the test procedures for refrigeration products with automatic icemakers (these amendments would reflect an energy use reduction of 56 kWh per year). As discussed in section III.G.3 of this document, DOE is not requiring use of the amended automatic icemaker energy use adder until the compliance dates of any amended energy conservation standards for refrigeration products that account for the amended energy use value. Therefore, manufacturers will not be required to re-certify or re-label products with automatic icemakers as a result of the amended automatic icemaker energy use adder adopted in this final rule and will incur no corresponding costs.

3. Impact of the Other Amendments

DOE anticipates that the remainder of the amendments would not impact manufacturers' test or certification costs. Most of the amendments provide additional specificity to the applicability and conduct of the test procedures. These amendments include: (1) Clarifying test setup provisions; (2) specifying certain test condition measurements and applicability to data recording periods; (3) specifying stabilization requirements for products not able to meet the existing requirements; and (4) requiring connected function communication modules to be on, but not connected to a network, for testing.

While these amendments are not expected to impact measured energy use compared to the existing test procedure, manufacturers may opt to re-test models according to the amended test procedure. Because DOE requires

[33] DOE expects that costs would decrease by a smaller percentage than the total reduction in test time due to fixed overhead and labor requirements for testing (*i.e.,* test set up and data analysis would be unchanged). The total cost per test is based on FSI's comment stating between $4,500 and $5,000 per refrigerator test conducted at outside laboratories. (FSI, No. 6 at p. 1)

manufacturers to test at least two units per model to determine ratings, DOE estimates this optional re-testing cost would be $9,000 per re-tested model.[34]

DOE has determined that these other amendments would not require changes to the designs of refrigeration products, and that the amendments would not impact the utility or availability of these products. The other amendments would not impact the representations of energy efficiency or energy use of refrigeration products. As a result, manufacturers would be able to rely on data generated under the current test procedure. Manufacturers would not be required to re-test refrigeration products as a result of DOE's adoption of the other amendments to the test procedure.

## IV. Procedural Issues and Regulatory Review

### *A. Review Under Executive Order 12866*

The Office of Management and Budget (''OMB'') has determined this test procedure rulemaking does not constitute ''significant regulatory actions'' 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'') in OMB.

### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *https://energy.gov/gc/office-general-counsel.*

DOE reviewed this adopted rule to amend the test procedures for refrigeration products under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule amends DOE's refrigeration products test procedures to incorporate by reference AHAM HRF–1–2019, which includes the following substantive changes compared to the existing test procedures: (1) Clarifying test setup provisions; (2) specifying certain test condition measurements and applicability to data recording periods; (3) allowing for stabilization data to also serve as test data for certain product types; (4) specifying stabilization requirements for products not able to meet the existing requirements; (5) revising the automatic icemaking energy consumption adder; and (6) requiring connected function communication modules to be on, but not connected to a network, for testing. DOE concludes that this final rule will not have a significant impact on a substantial number of small entities, and the factual basis for this certification is set forth in the following paragraphs.

DOE uses the Small Business Administration's (''SBA'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the North American Industry Classification System (''NAICS'').[35] The 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 2017 NAICS code for refrigeration products is 335220, major household appliance manufacturing.[36] The threshold number for NAICS code 335220 is 1,500 employees. This employee threshold includes all employees in a business's parent company and any other subsidiaries.

Most of the manufacturers supplying refrigeration products are large multinational corporations. DOE conducted a focused inquiry into small business manufacturers of products covered by this rulemaking. DOE used the CCMS Database [37] for miscellaneous refrigeration products and for refrigerators, refrigerator-freezers, and freezers to create a list of companies that sell refrigeration products covered by this rulemaking in the United States.

DOE identified a total of 42 original equipment manufacturers that sell refrigeration products in the United States market.

DOE then reviewed these companies to determine whether the entities met the SBA's definition of ''small business'' and screened out any companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned and operated. Based on this review, DOE has identified five domestic manufacturers of refrigeration products that are potential small businesses. Through this analysis, DOE has determined the expected effects of this rulemaking on these covered small businesses and whether a FRFA was needed (*i.e.,* whether DOE could certify that this rulemaking would not have a significant impact).

As described, DOE is incorporating by reference the latest version of the industry standard HRF–1–2019, which results in certain substantive changes in the test procedure compared to the existing approach, some of which may impact costs incurred by manufacturers.

DOE is combining the stabilization period with the test period for certain products. This change would likely decrease test duration by at least 6 hours for these models (reflecting the 3-hour minimum test period duration at two temperature settings) and up to 48 hours (reflecting 24-hour test periods at each setting). 84 FR 70842, 70862. DOE estimated that this would translate to a cost savings of $500 per test for these models (an estimated 10 percent of total testing costs). *Id.* Based on review of the CCMS Database, DOE identified 325 models affected by the amendment of the stabilization period, representing five small domestic manufacturers. *Id.* Additionally, based on data from DOE's CCMS Database, DOE anticipated that small domestic manufacturers would replace or modify existing models every 3.5 years; therefore, on average, small domestic manufacturers would introduce approximately 93 new or modified models each year that would use these shorter overall testing periods. *Id.* Given that DOE requires manufacturers to test at least two units per model, small manufacturers would on average conduct 186 tests annually using these shorter overall testing periods. *Id.* Using these estimates, DOE anticipated the stabilization amendment would save small domestic manufacturers approximately $93,000 per year. *Id.* Therefore, DOE determined that this proposed amendment to the test procedure would lead to cost savings for small domestic manufacturers. *Id.*

[34] Based on the initial $5,000 per unit testing cost estimate and the $500 savings due to the stabilization criteria proposed in this amended test procedure. DOE estimates that the stabilization period time savings would apply to most consumer refrigeration products.

[35] Available online at: *https://www.sba.gov/document/support--table-size-standards.*

[36] The NAICS Association updated its industry classification codes in early 2017. The previous 2012 NAICS code for consumer refrigerators, refrigerator-freezers, and freezers was 335222, household refrigerator and home freezer manufacturing.

[37] *www.regulations.doe.gov/certification-data.* Accessed September, 2020.

FSI commented in response to the December 2019 NOPR that DOE energy tests for small companies without their own test facilities may cost $5,000 per test, and this cost is an impediment to innovation. FSI further supported the use of computer-aided design (''CAD'') instead of volume measurements to reduce costs and improve accuracy and reproducibility of testing. FSI strongly urged DOE to simplify setup and test procedures to drive this cost down. FSI observed that innovation often comes from new and small companies and that increasing regulatory burden or complexity is a significant barrier to the kind of innovation taking place in these businesses. (FSI, No. 21, p. 2)

DOE recognizes these comments and notes they are similar to those submitted by FSI in response to the June 2017 RFI (FSI, No. 6, pp. 2–3), which DOE considered in the December 2019 NOPR. 84 FR 70842, 70862. DOE is not establishing any amendments to the test procedures for refrigeration products that would increase the cost of these tests at third-party or manufacturer test laboratories. DOE also understands that relying on CAD to calculate volumes decreases test burden compared to physically measuring volume on each test unit. Accordingly, DOE already allows manufacturers to use such designs in certifying product volumes. In 10 CFR 429.72, DOE states that total refrigerated volume of a basic model may be determined by performing a calculation of the volume based upon CAD models of the basic model in lieu of physical measurements of a production unit of the basic model, according to the applicable provisions in the test procedures for measuring volume. Regarding complexity of the test procedures, DOE notes that the amendments established in this final rule harmonize with the industry test method, improve clarity, and overall are expected to decrease costs associated with testing.

As discussed in section III.K of this document, DOE does not expect any other amendments established in this final rule to impact testing, certification, or labelling costs for manufacturers.

Overall, DOE estimates that the amendments for small businesses would translate to a cost savings of approximately $93,000 each year.

Therefore, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

### *C. Review Under the Paperwork Reduction Act of 1995*

Manufacturers of refrigeration products must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including refrigeration products. (*See* generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

### *D. Review Under the National Environmental Policy Act of 1969*

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for refrigeration products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *E. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

### *F. Review Under Executive Order 12988*

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses

other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each federal agency to assess the effects of federal regulatory actions on state, local, and tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *https://energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*J. Review Under Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

*L. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the FTC concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedures for refrigeration products adopted in this final rule incorporate testing methods contained in certain sections of HRF–1–2019. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

*M. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*N. Description of Materials Incorporated by Reference*

In this final rule, DOE incorporates by reference the test procedure published

by AHAM, titled ''Energy and Internal Volume of Consumer Refrigeration Products,'' HRF–1–2019. HRF–1–2019 is an industry-accepted test procedure for measuring the energy consumption of electric (single-phase, alternating current) refrigerators, refrigerator-freezers, freezers or miscellaneous refrigeration products. Specifically, the test procedure codified by this final rule references various sections of HRF–1–2019 that address test setup, instrumentation, test conduct, and calculations.

Copies of HRF–1–2019 can be obtained from the Association of Home Appliance Manufacturers, 1111 19th Street NW, Suite 402, Washington, DC 20036, (202) 872–5955, or go to *https://www.AHAM.org.*

The incorporation by reference of AS/NZS 4474.1:2007 in appendix A to subpart B of part 430 has already been approved by the Director of the Federal Register and there are no changes in this final rule.

## V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

### List of Subjects

*10 CFR Part 429*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

*10 CFR Part 430*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

### Signing Authority

This document of the Department of Energy was signed on September 29, 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 September 30, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons stated in the preamble, DOE amends parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

## PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.14 is amended by revising paragraphs (b)(3) and (d) to read as follows:

### § 429.14 Consumer refrigerators, refrigerator-freezers and freezers.

* * * * *

(b) * * *

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information: Whether the basic model has variable defrost control (in which case, manufacturers must also report the values, if any, of $CT_L$ and $CT_M$ (See section 5.3 of appendix A and appendix B to subpart B of 10 CFR part 430) used in the calculation of energy consumption), whether the basic model has variable anti-sweat heater control (in which case, manufacturers must also report the values of heater Watts at the ten humidity levels (5%, 15%, 25%, 35%, 45%, 55%, 65%, 75%, 85%, and 95%) used to calculate the variable anti-sweat heater ''Correction Factor''), and whether testing has been conducted with modifications to the standard temperature sensor locations, as specified in section 5.1(g) of appendices A and B to subpart B of 10 CFR part 430, as applicable.

* * * * *

(d) *Product category determination.* Each basic model shall be certified according to the appropriate product category as defined in § 430.2 based on compartment volumes and compartment temperatures.

(1) Compartment volumes used to determine product category shall be the mean of the measured compartment volumes for each tested unit of the basic model according to the provisions in section 4.1 of appendix A of subpart B of part 430 of this chapter for refrigerators and refrigerator-freezers and section 4.1 of appendix B of subpart B of part 430 of this chapter for freezers, or the compartment volumes of the basic model as calculated in accordance with § 429.72(c); and

(2) Compartment temperatures used to determine product category shall be the mean of the measured compartment temperatures at the coldest setting for each tested unit of the basic model according to the provisions of appendix A of subpart B of part 430 of this chapter for refrigerators and refrigerator-freezers and appendix B of subpart B of part 430 of this chapter for freezers.

■ 3. Section 429.61 is amended by revising paragraphs (b)(3) and (d) to read as follows:

### § 429.61 Consumer miscellaneous refrigeration products.

* * * * *

(b) * * *

(3) Pursuant to § 429.12(b)(13), a certification report coolers or combination cooler refrigeration products shall include the following additional product-specific information: Whether the basic model has variable defrost control (in which case, manufacturers must also report the values, if any, of $CT_L$ and $CT_M$ (See section 5.3 in appendix A to subpart B of part 430 of this chapter) used in the calculation of energy consumption), whether the basic model has variable anti-sweat heater control (in which case, manufacturers must also report the values of heater Watts at the ten humidity levels (5%, 15%, 25%, 35%, 45%, 55%, 65%, 75%, 85%, and 95%) used to calculate the variable anti-sweat heater ''Correction Factor''), and whether testing has been conducted with modifications to the standard temperature sensor locations, as specified in section 5.1(g) of appendix A to subpart B of part 430 of this chapter.

* * * * *

(d) Product category determination. Each basic model of miscellaneous refrigeration product must be certified according to the appropriate product category as defined in § 430.2 based on compartment volumes and compartment temperatures.

(1) Compartment volumes used to determine product category shall be the mean of the measured compartment volumes for each tested unit of the basic model according to the provisions in section 4.1 of appendix A to subpart B of part 430 of this chapter, or the compartment volumes of the basic model as calculated in accordance with § 429.72(d); and

(2) Compartment temperatures used to determine product category shall be the mean of the measured compartment temperatures at the coldest setting for each tested unit of the basic model according to the provisions of appendix A to subpart B of part 430 of this chapter. For cooler compartments with temperatures below 39 °F (3.9 °C) but no lower than 37 °F (2.8 °C), the compartment temperatures used to determine product category shall also include the mean of the measured compartment temperatures at the warmest setting for each tested unit of the basic model according to the provisions of appendix A to subpart B of part 430 of this chapter.

■ 4. Section 429.134 is amended by revising paragraphs (b)(2) and (l)(2) to read as follows:

**§ 429.134 Product-specific enforcement provisions.**

* * * * *

(b) * * *

(2) *Test for models with two compartments, each having its own user-operable temperature control.* The test described in section 5.2(b) of the applicable test procedure for refrigerators or refrigerator-freezers in appendix A to subpart B of 10 CFR part 430 shall be used for all units of a tested basic model before DOE makes a determination of noncompliance with respect to the basic model.

* * * * *

(l) * * *

(2) Test for models with two compartments, each having its own user-operable temperature control. The test described in section 5.2(b) of the applicable test procedure in appendix A to subpart B part 430 of this chapter shall be used for all units of a tested basic model before DOE makes a determination of noncompliance with respect to the basic model.

* * * * *

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 5. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 6. Section 430.3 is amended by revising paragraph (i)(4) to read as follows:

**§ 430.3 Materials incorporated by reference.**

* * * * *

(i) * * *

(4) AHAM HRF–1–2019 (''HRF–1–2019''), Energy and Internal Volume of Consumer Refrigeration Products, Copyright © 2019, IBR approved for appendices A and B to subpart B of this part.

* * * * *

■ 7. Section 430.23 is amended by revising paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), (a)(4) and (5), (b)(1)(ii), (b)(2)(ii), (b)(3)(ii), (b)(4) and (5); (ff)(1)(ii), (ff)(2)(ii), (ff)(3)(ii), and (ff)(4) and (5) to read as follows:

**§ 430.23 Test procedures for the measurement of energy and water consumption.**

* * * * *

(a) * * *

(1) * * *

(ii) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to appendix A of this subpart; and

* * * * *

(2) * * *

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to appendix A of this subpart; and

* * * * *

(3) * * *

(ii) The average per-cycle energy consumption for the specified cycle type, determined according to appendix A of this subpart; and

* * * * *

(4) The energy factor, expressed in cubic feet per kilowatt-hour per cycle, shall be:

(i) For models without an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to appendix A of this subpart, divided by—

(B) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to appendix A of this subpart, the resulting quotient then being rounded to the second decimal place; and

(ii) For models having an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to appendix A of this subpart, divided by—

(B) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to appendix A of this subpart, the resulting quotient then being rounded to the second decimal place.

(5) The annual energy use, expressed in kilowatt-hours per year and rounded to the nearest kilowatt-hour per year, shall be determined according to appendix A of this subpart.

* * * * *

(b) * * *

(1) * * *

(ii) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to appendix B of this subpart; and

* * * * *

(2) * * *

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to appendix B of this subpart; and

* * * * *

(3) * * *

(ii) The average per-cycle energy consumption for the specified cycle type, determined according to appendix B of this subpart; and

* * * * *

(4) The energy factor, expressed in cubic feet per kilowatt-hour per cycle, shall be:

(i) For models without an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to appendix B of this subpart, divided by—

(B) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to appendix B of this subpart, the resulting quotient then being rounded to the second decimal place; and

(ii) For models having an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to appendix B of this subpart, divided by—

(B) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to appendix B of this subpart, the resulting quotient then being rounded to the second decimal place.

(5) The annual energy use, expressed in kilowatt-hours per year and rounded to the nearest kilowatt-hour per year, shall be determined according to appendix B of this subpart.

* * * * *

(ff) * * *

(1) * * *

(ii) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to appendix A of this subpart; and

* * * * *

(2) * * *

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to appendix A of this subpart; and

* * * * *

(3) * * *

(ii) The average per-cycle energy consumption for the specified cycle type, determined according to appendix A of this subpart; and

* * * * *

(4) The energy factor, expressed in cubic feet per kilowatt-hour per cycle, shall be:

(i) For models without an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to appendix A of this subpart, divided by—

(B) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to appendix A of this subpart, the resulting quotient then being rounded to the second decimal place; and

(ii) For models having an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to appendix A of this subpart, divided by—

(B) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to appendix A of this subpart, the resulting quotient then being rounded to the second decimal place.

(5) The annual energy use, expressed in kilowatt-hours per year and rounded to the nearest kilowatt-hour per year, shall be determined according to appendix A of this subpart.

* * * * *

■ 8. Appendix A to subpart B of part 430 is revised to read as follows:

## Appendix A to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Refrigerators, Refrigerator-Freezers, and Miscellaneous Refrigeration Products

**Note:** Prior to April 11, 2022, any representations of volume and energy use of refrigerators, refrigerator-freezers, and miscellaneous refrigeration products must be based on the results of testing pursuant to either this appendix or the procedures in appendix A as it appeared at 10 CFR part 430, subpart B, appendix A, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2019. Any representations of volume and energy use must be in accordance with whichever version is selected. On or after April 11, 2022, any representations of volume and energy use must be based on the results of testing pursuant to this appendix.

For refrigerators and refrigerator-freezers, the rounding requirements specified in sections 4 and 5 of this appendix are not required for use until the compliance date of any amendment of energy conservation standards for these products published after October 12, 2021.

*1. Referenced Materials*

DOE incorporated by reference AHAM HRF–1–2019, *Energy and Internal Volume of Consumer Refrigeration Products* (''HRF–1–2019''), and AS/NZS 4474.1:2007, *Performance of Household Electrical Appliances—Refrigerating Appliances; Part 1: Energy Consumption and Performance, Second Edition* (''AS/NZS 4474.1:2007''), in their entirety in § 430.3; however, only enumerated provisions of these documents are applicable to this appendix. If there is any conflict between HRF–1–2019 and this appendix or between AS/NZS 4474.1:2007 and this appendix, follow the language of the test procedure in this appendix, disregarding the conflicting industry standard language.

(a) AHAM HRF–1–2019, (''HRF–1–2019''), Energy and Internal Volume of Consumer Refrigeration Products:

(i) Section 3—Definitions, as specified in section 3 of this appendix;

(ii) Section 4—Method for Determining the Refrigerated Volume of Consumer Refrigeration Products, as specified in section 4.1 of this appendix;

(iii) Section 5—Method for Determining the Energy Consumption of Consumer Refrigeration Products (excluding Table 5–1 and sections 5.5.6.5, 5.8.2.1.2, 5.8.2.1.3, 5.8.2.1.4, 5.8.2.1.5, and 5.8.2.1.6), as specified in section 5 of this appendix; and

(iv) Section 6—Method for Determining the Adjusted Volume of Consumer Refrigeration Products, as specified in section 4.2 of this appendix;

(b) AS/NZS 4474.1:2007, (''AS/NZS 4474.1:2007''), Performance of Household Electrical Appliances—Refrigerating Appliances; Part 1: Energy Consumption and Performance, Second Edition:

(i) Appendix M—Method of Interpolation When Two Controls are Adjusted, as specified in sections 5.2(b) and 5.3(e) of this appendix.

(ii) [Reserved]

If there is any conflict between HRF–1–2019 and this appendix or between AS/NZS 4474.1:2007 and this appendix, follow the language of the test procedure in this appendix, disregarding the conflicting industry standard language.

*2. Scope*

This appendix provides the test procedure for measuring the annual energy use in kilowatt-hours per year (kWh/yr), the total refrigerated volume in cubic feet ($ft^3$), and the total adjusted volume in cubic feet ($ft^3$) of refrigerators, refrigerator-freezers, and miscellaneous refrigeration products.

*3. Definitions*

Section 3, *Definitions,* of HRF–1–2019 applies to this test procedure. In case of conflicting terms between HRF–1–2019 and DOE's definitions in this appendix or in § 430.2, DOE's definitions take priority.

*Through-the-door ice/water dispenser* means a device incorporated within the cabinet, but outside the boundary of the refrigerated space, that delivers to the user on demand ice and may also deliver water from within the refrigerated space without opening an exterior door. This definition includes dispensers that are capable of dispensing ice and water or ice only.

*4. Volume*

Determine the refrigerated volume and adjusted volume for refrigerators, refrigerator-freezers, and miscellaneous refrigeration products in accordance with the following sections of HRF–1–2019, respectively:

4.1. Section 4, Method for Determining the Refrigerated Volume of Consumer Refrigeration Products; and

4.2. Section 6, Method for Determining the Adjusted Volume of Consumer Refrigeration Products.

*5. Energy Consumption*

Determine the annual energy use (''AEU'') in kilowatt-hours per year (kWh/yr), for refrigerators, refrigerator-freezers, and miscellaneous refrigeration products in accordance with section 5, *Method for Determining the Energy Consumption of Consumer Refrigeration Products,* of HRF–1–2019, except as follows.

5.1. Test Setup and Test Conditions

(a) In section 5.3.1 of HRF–1–2019, the top of the unit shall be determined by the refrigerated cabinet height, excluding any accessories or protruding components on the top of the unit.

(b) The ambient temperature and vertical ambient temperature gradient requirements specified in section 5.3.1 of HRF–1–2019 shall be maintained during both the stabilization period and the test period.

(c) The power supply requirements as specified in section 5.5.1 of HRF–1–2019 shall be maintained based on measurement intervals not to exceed one minute.

(d) The ice storage compartment temperature requirement as specified in

section 5.5.6.5 in HRF–1–2019 is not required.

(e) For cases in which setup is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (See section 6 of this appendix).

(f) If the interior arrangements of the unit under test do not conform with those shown in Figures 5–1 or 5–2 of HRF–1–2019, as appropriate, the unit must be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the unit, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 429.71, and the certification report shall indicate that non-standard sensor locations were used. If any temperature sensor is relocated by any amount from the location prescribed in Figure 5–1 or 5–2 of HRF–1–2019 in order to maintain a minimum 1-inch air space from adjustable shelves or other components that could be relocated by the consumer, except in cases in which the Figures prescribe a temperature sensor location within 1 inch of a shelf or similar feature (*e.g.,* sensor T3 in Figure 5–1), this constitutes a relocation of temperature sensors that must be recorded in the test data and reported in the certification report as described in this paragraph.

5.2. Test Conduct

(a) Standard Approach

(i) For the purposes of comparing compartment temperatures with standardized temperatures, as described in section 5.6 of HRF–1–2019, the freezer compartment temperature shall be as specified in section 5.8.1.2.5 of HRF–1–2019, the fresh food compartment temperature shall be as specified in section 5.8.1.2.4 of HRF–1–2019, and the cooler compartment temperature shall be as specified in section 5.8.1.2.6 of HRF–1–2019.

(ii) In place of Table 5–1 in HRF–1–2019, refer to Table 1 of this section.

TABLE 1—TEMPERATURE SETTINGS: GENERAL CHART FOR ALL PRODUCTS

| First test | | Second test | | Energy calculation based on: |
|---|---|---|---|---|
| Setting | Results | Setting | Results | |
| Mid for all Compartments .. | All compartments below standard reference temperature. | Warmest for all Compartments. | All compartments below standard reference temperature. | Second Test Only. |
| | | | One or more compartments above standard reference temperature. | First and Second Test. |
| | One or more compartments above standard reference temperature. | Coldest for all Compartments. | All compartments below standard reference temperature. | First and Second Test. |
| | | | One or more compartments above standard reference temperature. | Model may not be certified as compliant with energy conservation standards based on testing of this unit. Confirm that unit meets product definition. If so, see section 6 of this appendix. |

(b) Three-Point Interpolation Method (Optional Test for Models with Two Compartments and User-Operable Controls). As specified in section 5.6.3(6) of HRF–1–2019, and as an optional alternative to section 5.2(a) of this appendix, perform three tests such that the set of tests meets the ''minimum requirements for interpolation'' of AS/NZS 4474.1:2007 appendix M, section M3, paragraphs (a) through (c) and as illustrated in Figure M1. The target temperatures txA and txB defined in section M4(a)(i) of AS/NZ 4474.1:2007 shall be the standardized temperatures defined in section 5.6 of HRF–1–2019.

5.3. Test Cycle Energy Calculations

Section 5.8.2, *Energy Consumption,* of HRF–1–2019 applies to this test procedure, except as follows:

(a)(i) For refrigerators and refrigerator-freezers: To demonstrate compliance with the energy conservation standards at 10 CFR 430.32(a) applicable to products manufactured on or after September 15, 2014, IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with one or more automatic icemakers and otherwise equals 0 (zero).

(ii) For miscellaneous refrigeration products: To demonstrate compliance with the energy conservation standards at 10 CFR 430.32(aa) applicable to products manufactured on or after October 28, 2019, IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with one or more automatic icemakers and otherwise equals 0 (zero).

(b) In place of section 5.8.2.1.2 of HRF–1–2019, use the calculations provided in this section. For units with long-time automatic defrost control using the two-part test period, the test cycle energy shall be calculated as:

$$\mathrm{ET} = \left(\frac{1440 \times K \times EP1}{T1}\right) + \left[EP2 - \left(EP1 \times \frac{T2}{T1}\right)\right] \times \left[\frac{12}{CT}\right] \times K$$

Where:

ET = test cycle energy expended in kilowatt-hours per day;

1440 = conversion factor to adjust to a 24-hour average use cycle in minutes per day;

K = dimensionless correction factor of 1.0 for refrigerators and refrigerator-freezers and 0.55 for miscellaneous refrigeration products.

EP1 = energy expended in kilowatt-hours during the first part of the test;

EP2 = energy expended in kilowatt-hours during the second part of the test;

T1 and T2 = length of time in minutes of the first and second test parts, respectively;

CT = defrost timer run time or compressor run time between defrosts in hours required to go through a complete cycle, rounded to the nearest tenth of an hour;

12 = factor to adjust for a 50-percent run time of the compressor in hours per day.

(c) In place of sections 5.8.2.1.3 and 5.8.2.1.4 of HRF–1–2019, use the calculations provided in this section. For units with variable defrost control, the test cycle energy shall be calculated as set forth in section 5.3(a) of this appendix with the following addition:

CT shall be calculated equivalent to:

$$CT = \frac{CT_L \times CT_M}{F \times (CT_M - CT_L) + CT_L}$$

Where:

$CT_L$ = the least or shortest compressor run time between defrosts used in the variable defrost control algorithm (greater than or equal to 6 but less than or equal to 12 hours), or the shortest compressor run time between defrosts observed for the test (if it is shorter than the shortest run time used in the control algorithm and is greater than 6 hours), or 6 hours (if the shortest observed run time is less than 6 hours), in hours rounded to the nearest tenth of an hour;

$CT_M$ = the maximum compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than $CT_L$ but not more than 96 hours);

For variable defrost models with no values of $CT_L$ and $CT_M$ in the algorithm, the default values of 6 and 96 shall be used, respectively.

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.

(d) In place of section 5.8.2.1.5 of HRF–1–2019, use the calculations provided in this section. For multiple-compressor products with automatic defrost, the two-part test method in section 5.7.2.1 of HRF–1–2019 shall be used, and the test cycle energy shall be calculated as:

$$\mathrm{ET} = \left(\frac{1440 \times K \times EP1}{T1}\right) + \sum_{i=1}^{D}\left[\left(EP2_i - \left(EP1 \times \frac{T2_i}{T1}\right)\right) \times \left(\frac{12}{CT_i}\right) \times K\right]$$

Where:

ET, 1440, 12, and K are defined in section 5.3(a) of this appendix;

EP1, and T1 are defined in section 5.3(a) of this appendix;

i = a subscript variable that can equal 1, 2, or more that identifies each individual compressor system that has automatic defrost;

D = the total number of compressor systems with automatic defrost;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for compressor system i;

$T2_i$ = length of time in minutes of the second part of the test for compressor system i;

$CT_i$ = compressor run time between defrosts of compressor system i, rounded to the nearest tenth of an hour, for long-time automatic defrost control equal to a fixed time in hours, and for variable defrost control equal to:

$$CT_i = \frac{CT_{L,i} \times CT_{M,i}}{F \times \left(CT_{M,i} - CT_{L,i}\right) + CT_{L,i}}$$

Where:

$CT_{L,i}$ = for compressor system i, the shortest cumulative compressor-on time between defrost heater-on events used in the variable defrost control algorithm ($CT_L$ for the compressor system with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours), in hours rounded to the nearest tenth of an hour;

$CT_{M,i}$ = for compressor system i, the maximum compressor-on time between defrost heater-on events used in the variable defrost control algorithm (greater than $CT_{L,i}$ but not more than 96 hours), in hours rounded to the nearest tenth of an hour;

For defrost cycle types with no values of $CT_L$ and $CT_M$ in the algorithm, the default values of 6 and 96 shall be used, respectively.

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.

(e) In place of section 5.8.2.1.6 of HRF–1–2019, use the calculations provided in this section. For units with long-time automatic defrost control and variable defrost control with multiple defrost cycle types, the two-part test method in section 5.7.2.1 of HRF–1–2019 shall be used, and the test cycle energy shall be calculated as:

$$\mathrm{ET} = \left(\frac{1440 \times K \times EP1}{T1}\right) + \sum_{i=1}^{D}\left[\left(EP2_i - \left(EP1 \times \frac{T2_i}{T1}\right)\right) \times \left(\frac{12}{CT_i}\right) \times K\right]$$

Where:

ET, 1440, 12, and K are defined in section 5.3(a) of this appendix;

EP1, and T1 are defined in section 5.3(a) of this appendix;

i = a subscript variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the product;

D = the total number of defrost cycle types;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

$CT_i$ = defrost timer run time or compressor run time between instances of defrost cycle type i, rounded to the nearest tenth of an hour;

12 = factor to adjust for a 50-percent run time of the compressor in hours per day.

(i) For long-time automatic defrost control, CTi shall be equal to a fixed time in hours rounded to the nearest tenth of an hour. For cases in which there are more than one fixed CT value for a given defrost cycle type, an average fixed CT value shall be selected for this cycle type.

(ii) For variable defrost control, CTi shall be calculated equivalent to:

$$CT_i = \frac{CT_{L,i} \times CT_{M,i}}{F \times \left(CT_{M,i} - CT_{L,i}\right) + CT_{L,i}}$$

Where:

$CT_{L,i}$ = the least or shortest compressor run time between instances of the defrost cycle type i in hours rounded to the nearest tenth of an hour ($CT_L$ for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

$CT_{M,i}$ = the maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than $CT_{L,i}$ but not more than 96 hours);

For cases in which there are more than one $CT_M$ and/or $CT_L$ value for a given defrost cycle type, an average of the $CT_M$ and $CT_L$ values shall be selected for this defrost cycle type. For defrost cycle types with no values of $CT_L$ and $CT_M$ in the algorithm, the default values of 6 and 96 shall be used, respectively.

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.

(f) If the three-point interpolation method of section 5.2(b) of this appendix is used for setting temperature controls, the average per-cycle energy consumption shall be defined as follows:

$E = E_x + IET$

Where:

E is defined in 5.9.1.1 of HRF–1–2019;
IET is defined in 5.9.2.1 of HRF–1–2019; and
$E_x$ is defined and calculated as described in appendix M, section M4(a) of AS/NZS 4474.1:2007. The target temperatures $t_{xA}$ and $t_{xB}$ defined in section M4(a)(i) of AS/NZS 4474.1:2007 shall be the standardized temperatures defined in section 5.6 of HRF–1–2019.

*6. Test Procedure Waivers*

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a basic model, a manufacturer must obtain a waiver under § 430.27 to establish an acceptable test procedure for each such basic model. Such instances could, for example, include situations where the test setup for a particular basic model is not clearly defined by the provisions of this appendix. For details regarding the criteria and procedures for obtaining a waiver, please refer to § 430.27.

■ 9. Appendix B to subpart B of part 430 is revised to read as follows:

## Appendix B to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

**Note:** Prior to April 11, 2022, any representations of volume and energy use of freezers must be based on the results of testing pursuant to either this appendix or the procedures in appendix B as it appeared at 10 CFR part 430, subpart B, appendix B, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2019. Any representations of volume and energy use must be in accordance with whichever version is selected. On or after April 11, 2022, any representations of volume and energy use must be based on the results of testing pursuant to this appendix.

For freezers, the rounding requirements specified in sections 4 and 5 of this appendix are not required for use until the compliance date of any amendment of energy conservation standards for these products published after October 12, 2021.

*1. Referenced Materials*

DOE incorporated by reference HRF–1–2019, *Energy and Internal Volume of Consumer Refrigeration Products* (''HRF–1–2019'') in its entirety in § 430.3; however, only enumerated provisions of this document are applicable to this appendix. If there is any conflict between HRF–1–2019 and this appendix, follow the language of the test procedure in this appendix, disregarding the conflicting industry standard language.

(a) AHAM HRF–1–2019, (''HRF–1–2019''), Energy and Internal Volume of Consumer Refrigeration Products:

(i) Section 3—Definitions, as specified in section 3 of this appendix;

(ii) Section 4—Method for Determining the Refrigerated Volume of Consumer Refrigeration Products, as specified in section 4.1 of this appendix;

(iii) Section 5—Method for Determining the Energy Consumption of Consumer Refrigeration Products (excluding Table 5–1 and sections 5.5.6.5, 5.8.2.1.2, 5.8.2.1.3, 5.8.2.1.4, 5.8.2.1.5, and 5.8.2.1.6), as specified in section 5 of this appendix; and

(iv) Section 6—Method for Determining the Adjusted Volume of Consumer Refrigeration Products, as specified in section 4.2 of this appendix.

(b) Reserved.

If there is any conflict between HRF–1—2019 and this appendix, follow the language of the test procedure in this appendix, disregarding the conflicting industry standard language.

*2. Scope*

This appendix provides the test procedure for measuring the annual energy use in kilowatt-hours per year (kWh/yr), the total refrigerated volume in cubic feet ($ft^3$), and the total adjusted volume in cubic feet ($ft^3$) of freezers.

*3. Definitions*

Section 3, *Definitions,* of HRF–1–2019 applies to this test procedure. In case of conflicting terms between HRF–1–2019 and DOE's definitions in this appendix or in § 430.2, DOE's definitions take priority.

*Through-the-door ice/water dispenser* means a device incorporated within the cabinet, but outside the boundary of the refrigerated space, that delivers to the user on demand ice and may also deliver water from within the refrigerated space without opening an exterior door. This definition includes dispensers that are capable of dispensing ice and water or ice only.

*4. Volume*

Determine the refrigerated volume and adjusted volume for freezers in accordance with the following sections of HRF–1–2019, respectively:

4.1. Section 4, Method for Determining the Refrigerated Volume of Consumer Refrigeration Products; and

4.2. Section 6, Method for Determining the Adjusted Volume of Consumer Refrigeration Products.

*5. Energy Consumption*

Determine the annual energy use (''AEU'') in kilowatt-hours per year (kWh/yr), for freezers in accordance with section 5, *Method for Determining the Energy Consumption of Consumer Refrigeration Products,* of HRF–1–2019, except as follows.

5.1. Test Setup and Test Conditions

(a) In section 5.3.1 of HRF–1–2019, the top of the unit shall be determined by the refrigerated cabinet height, excluding any accessories or protruding components on the top of the unit.

(b) The ambient temperature and vertical ambient temperature gradient requirements specified in section 5.3.1 of HRF–1–2019 shall be maintained during both the stabilization period and the test period.

(c) The power supply requirements as specified in section 5.5.1 of HRF–1–2019 shall be maintained based on measurement intervals not to exceed one minute.

(d) The ice storage compartment temperature requirement as specified in section 5.5.6.5 in HRF–1–2019 is not required.

(e) For cases in which setup is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (See section 6 of this appendix).

(f) If the interior arrangements of the unit under test do not conform with those shown in Figure 5–2 of HRF–1–2019, as appropriate, the unit must be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the unit, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 429.71, and the certification report shall indicate that non-standard sensor locations were used. If any temperature sensor is relocated by any amount from the location prescribed in Figure 5–2 of HRF–1- 2019 in order to maintain a minimum 1-inch air space from adjustable shelves or other components that could be relocated by the consumer, except in cases in which the Figure prescribes a temperature sensor location within 1 inch of a shelf or similar feature, this constitutes a relocation of temperature sensors that must be recorded in the test data and reported in the certification report as described in this paragraph.

5.2. Test Conduct

(a) For the purposes of comparing compartment temperatures with standardized temperatures, as described in section 5.6 of HRF–1–2019, the freezer compartment temperature shall be as specified in section 5.8.1.2.5 of HRF–1–2019.

(b) In place of Table 5–1 in HRF–1–2019, refer to Table 1 of this section.

TABLE 1—TEMPERATURE SETTINGS FOR FREEZERS

| First test | | Second test | | Energy calculation based on: |
|---|---|---|---|---|
| Setting | Results | Setting | Results | |
| Mid | Below standard reference temperature. | Warmest | Below standard reference temperature. | Second Test Only. |
| | | | Above standard reference temperature. | First and Second Test. |
| | Above standard reference temperature. | Coldest | Below standard reference temperature. | First and Second Test. |
| | | | Above standard reference temperature. | Model may not be certified as compliant with energy conservation standards based on testing of this unit. Confirm that unit meets product definition. If so, see section 6 of this appendix. |

5.3. Test Cycle Energy Calculations

Section 5.8.2, *Energy Consumption,* of HRF–1–2019 applies to this test procedure, except as follows:

(a) *For freezers:* To demonstrate compliance with the energy conservation standards at 10 CFR 430.32(a) applicable to products manufactured on or after September 15, 2014, IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with one or more automatic icemakers and otherwise equals 0 (zero).

(b) In place of section 5.8.2.1.2 of HRF–1–2019, use the calculations provided in this section. For units with long-time automatic defrost control using the two-part test period, the test cycle energy shall be calculated as:

$$\mathrm{ET} = \left(\frac{1440 \times K \times EP1}{T1}\right) + \left[EP2 - \left(EP1 \times \frac{T2}{T1}\right)\right] \times \left[\frac{12}{CT}\right] \times K$$

Where:

ET = test cycle energy expended in kilowatt-hours per day;

1440 = conversion factor to adjust to a 24-hour average use cycle in minutes per day;

K = dimensionless correction factor of 0.7 for chest freezers and 0.85 for upright freezers.

EP1 = energy expended in kilowatt-hours during the first part of the test;

EP2 = energy expended in kilowatt-hours during the second part of the test;

T1 and T2 = length of time in minutes of the first and second test parts, respectively;

CT = defrost timer run time or compressor run time between defrosts in hours required to go through a complete cycle, rounded to the nearest tenth of an hour;

12 = factor to adjust for a 50-percent run time of the compressor in hours per day.

(c) In place of sections 5.8.2.1.3 and 5.8.2.1.4 of HRF–1–2019, use the calculations provided in this section. For units with variable defrost control, the test cycle energy shall be calculated as set forth in section 5.3(a) of this appendix with the following addition:

CT shall be calculated equivalent to:

$$CT = \frac{CT_L \times CT_M}{F \times (CT_M - CT_L) + CT_L}$$

Where:

$CT_L$ = the least or shortest compressor run time between defrosts used in the variable defrost control algorithm (greater than or equal to 6 but less than or equal to 12 hours), or the shortest compressor run time between defrosts observed for the test (if it is shorter than the shortest run time used in the control algorithm and is greater than 6 hours), or 6 hours (if the shortest observed run time is less than 6 hours), in hours rounded to the nearest tenth of an hour;

$CT_M$ = the maximum compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than $CT_L$ but not more than 96 hours);

For variable defrost models with no values of $CT_L$ and $CT_M$ in the algorithm, the default values of 6 and 96 shall be used, respectively.

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.

*6. Test Procedure Waivers*

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a basic model, a manufacturer must obtain a waiver under § 430.27 to establish an acceptable test procedure for each such basic model. Such instances could, for example, include situations where the test setup for a particular basic model is not clearly defined by the provisions of this appendix. For details regarding the criteria and procedures for obtaining a waiver, please refer to § 430.27.

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# FEDERAL REGISTER

Vol. 86 Tuesday,
No. 194 October 12, 2021

Part IV

## The President

Notice of October 6, 2021—Continuation of the National Emergency With Respect to the Situation in and in Relation to Syria

Federal Register
Vol. 86, No. 194
Tuesday, October 12, 2021

# Presidential Documents

**Title 3—**

## The President

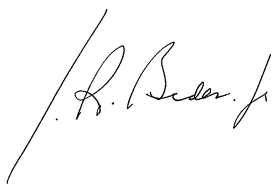
**Notice of October 6, 2021**

## Continuation of the National Emergency With Respect to the Situation in and in Relation to Syria

On October 14, 2019, by Executive Order 13894, 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 situation in and in relation to Syria.

The situation in and in relation to Syria, and in particular the actions by the Government of Turkey to conduct a military offensive into northeast Syria, undermines the campaign to defeat the Islamic State of Iraq and Syria, or ISIS, endangers civilians, and further threatens to undermine the peace, security, and stability in the region, and continues 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 in Executive Order 13894 of October 14, 2019, must continue in effect beyond October 14, 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 13894 with respect to the situation in and in relation to Syria.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
*October 6, 2021.*

[FR Doc. 2021–22302
Filed 10–8–21; 11:15 am]
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