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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Rural Housing Service

### Rural Business-Cooperative Service

#### 7 CFR Part 5001

[Docket No. RUS-19-Agency-0030]

RIN 0572-AC56

### OneRD Guaranteed Loan Regulation

**AGENCY:** Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

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

**SUMMARY:** Rural Development's Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, agencies of the United States Department of Agriculture (USDA), are publishing this final rule for the oneRD Guarantee Loan Program (oneRD). The intent of this rule is to make necessary revisions to the policy and procedures which will strengthen oversight and management of the growing Community Facilities (CF), Water and Waste Disposal (WWD), Business and Industry (B&I), and Rural Energy for America (REAP) guarantee portfolios. This action is part of a continuing effort by the Agency to improve customer service for its lenders and create a more efficient work process for its staff.

#### DATES:

*Effective date:* This final rule is effective December 10, 2021.

*Comment date:* Comments are due February 8, 2022.

**ADDRESSES:** You may submit comments, identified by docket number RUS-19-Agency-0030 and Regulatory Information Number (RIN) number 0572-AC56 through <https://www.regulations.gov>.

*Instructions:* All submissions received must include the Agency name and

docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Thomas P. Dickson, Regulations Management Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250; telephone 202-690-4492; email [thomas.dickson@usda.gov](mailto:thomas.dickson@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBCS), and the Rural Utilities Service (RUS), agencies of the USDA Rural Development mission area, hereinafter collectively referred to as the Agency, published a final rule with comment on July 14, 2020 (85 FR 42494) that created a unified guaranteed loan platform for enhanced delivery of four existing guaranteed loan programs: Community Facilities (CF) administered by RHS; Water and Waste Disposal (WWD) administered by RUS; and Business and Industry (B&I) and Rural Energy for America (REAP) administered by RBCS. The final rule was effective on October 1, 2020, and Rural Development began operating under the new guarantee loan platform on that date.

Collectively, Rural Development's guaranteed loan programs work to assist in building and maintaining sustainable rural communities. Through the public comment period and monthly office hours with lenders and staff, the Agency has solicited feedback on the requirements and policies contained in the rule implemented on October 1, 2020. The Agency has identified areas for revision or clarification that are amended with this final rule with comment. This oneRD final rule with comment incorporates revisions intended to simplify, clarify, improve, expand, and enhance the delivery of the four guaranteed loan programs.

## II. Summary of Comments and Responses

Through the public comment period and monthly office hours with lenders and staff, the Agency has solicited feedback on the requirements and policies contained in the rule implemented on October 1, 2020. The Agency has identified needed revisions and clarification based on the comments received.

Rural Development received 87 comments from 24 commenters on the final rule with comment issued on July 14, 2020. Five commenters were private citizens, 10 commenters were anonymous and 9 comments were from lenders.

The following discusses each comment and the Agency's response, organized by section with the comment paragraph and then Agency response paragraph. Sections with multiple comments will continue the comment/response paragraph pairing format until all comments for that section are addressed.

#### Section 5001.3 Definitions

*Comment:* Four commenters requested additional definitions to be included in the regulation.

*Agency Response:* The Agency has reviewed the request and has determined the additional definitions would not add additional clarity to the regulation. However during our review it came to our attention that the definition of affiliate needed some additional clarification and two definitions needed updating to conform with changes made to those definitions in 7 CFR 4280. Additionally, due to the COVID pandemic the Agency has extended the timeline some businesses need for start-up; this has highlighted a potential loophole in the regulation and definitions for new businesses and existing businesses. We thought the 12-month timeline to be adequate for full ramp-up, but we are seeing issues with this, thus we made technical revisions to the definition of Existing business as well as New business as enumerated in Section III, Summary of Changes.

#### Section 5001.104 WWD Projects and Requirements

*Agency Comment:* The Agency has identified a revision needed to improve consistency and clarity of Section 5001.104; this revision is included in

Section III, Summary of Changes to Rule.

*Section 5001.105 Eligible B&I Projects and Requirements*

*Comment:* The Agency received several comments that the OneRD rule language is much stricter for project eligibility than what the existing Business and Industry regulation, 7 CFR 4279, had been.

*Agency Response:* Upon evaluation, it was not the Agency's intention to further restrict project eligibility. Several clarifications have been identified and are included in Section III, Summary of Changes to Rule.

*Comment:* Several comments were received on the revised equity requirements under 7 CFR 5001.105(d). The commenters believed the equity requirement for new businesses has increased from 20% to 25% of the total eligible project costs under Table 1 to 5001.105(d). They believe this additional 5% makes it even more difficult for new businesses to open in rural America. They recommended that the equity requirements for new businesses be 20% regardless if calculated as balance sheet equity or as a percentage of the total eligible project costs.

*Agency Response:* The Agency believes that there may have been some confusion over the requirement—it's 25% of project cost OR 20% balance sheet equity at loan closing. In fact, there are 3 other options available to meet the equity requirements. This issue has been addressed with Lenders during monthly office hours the Agency held for lenders. Therefore, the Agency believes the issue has been resolved and no regulatory amendments are needed.

*Section 5001.115 Ineligible Projects—General*

*Comment:* Several commenters requested that 7 CFR 5001.115(a) "any investment or arbitrage" be removed as an ineligible purpose as it seems to be excluding. They believe that excluding arbitrage from program eligibility, in its strictest sense, would leave many businesses, that it would seem the Agency would want to promote ineligible for program assistance.

*Agency Response:* The Agency does not agree. The intent of the provision is to prevent borrowing money to buy stock and holding such stock for future increases in value, therefore the regulation will not be amended.

*Comment:* Seven comments were received in reference to 7 CFR 5001.115(n) which states "owner-occupied housing or self-storage facilities" are ineligible. The

commentors felt that the intent is for the owner to have control over the facility, which the owner(s) would if determining who can and cannot be a lessee. Self-storage facilities provide construction jobs, permanent jobs, and increase the tax base in rural communities.

*Agency Response:* The Agency agrees with the comments in part and is therefore amending 5001.115(n) to clarify when owner occupied housing is considered eligible and removed the ineligibility of self-storage facilities.

*Section 5001.121 Eligible Uses of Loan Funds*

*Agency Comment:* The Agency issued a final rule with comment on September 15, 2020, after the publication of the OneRD Guarantee regulation on July 1, 2020, promulgating Special Authority to Enable Funding of Broadband and Smart Utility Facilities Across Select Rural Development Programs (Smart Utility). A cross reference to 7 CFR 1980, subpart M has been added to the opening paragraph of Section 5001.121 as discussed in Section III, Summary of Changes to Rule.

*Section 5001.126 Borrower Eligibility*

*Agency Comment:* The Agency revised 7 CFR 4280 to remove references to the guarantee loan program and cross referencing to 7 CFR 5001. In the process of this revision, it was determined that 7 CFR 5001.126(e) needed to be amended to add "New Users" to conform with the revisions to 7 CFR 4280.

*Section 5001.130 Lender Eligibility Requirements*

*Agency Comment:* The Office of Management and Budget promulgated revisions to 7 CFR 25, "Universal Identifier and System for Award Management" on August 13, 2020, after the publication of the OneRD regulation on July 14, 2020. Therefore, a cross reference to 7 CFR 25 is needed in 5001.130 which requires an awardee of Federal financial assistance be registered in and maintain an active account in the System for Award Management (SAM). Section 5001.130(a) is amended to include the new requirements for lenders to be registered in and maintain an account in SAM in accordance with 7 CFR 25.200.

*Section 5001.202 Lender's Credit Evaluation*

*Comment:* The Agency Received a couple of comments on the need for the Lender to discuss the feasibility study, as well as other applicable studies and reports in the credit presentation

pursuant to § 5001.202(b)(5) and submit such supporting documentation when applicable. However, the commenter felt that it appeared that the Agency will have its own policy. The commenter felt it is incumbent on the Agency to disclose its feasibility study policy to Lenders.

*Agency Response:* The Agency agrees with the comment and therefore is amending 7 CFR 5001.202(b)(2) to further clarify when feasibility studies are required.

*Section 5001.204 Personal, Partnership, and Corporate Guarantees*

*Agency Comment:* The Agency has identified a revision needed to improve consistency and clarity of Section 5001.204; this revision is included in Section III, Summary of Changes to Rule.

*Section 5001.205 General Project Monitoring Requirements*

*Comment:* Six lenders commented that they are happy to see that the Agency is allowing Loan Note Guarantees (LNG) prior to construction, however they feel the adoption of the current procurement process and standards to regulate construction loan guarantees is not in the borrower, lender or government's interest. They believe the adoption of the federal process would be an injurious and crippling barrier to entry into the LNG prior to construction, defeating the whole purpose of this rule. They stated all lenders have a construction policy in place to mitigate risk and by adding the requirements to mirror the USDA construction disbursement only increases the burden for the lender and urged us to reconsider this approach.

*Agency Response:* The Agency agrees with the comments that the lenders have the capacity and experience to manage this issue and therefore is amending Section 5001.205(e)(2)(ii) to allow the lender the flexibility when it documents the loan to include provisions to disburse funds and monitor progress of the construction project.

*Section 5001.207 Environmental Responsibilities*

*Comment:* The Agency received five comments pertaining to the Council for Environmental Quality (CEQ) publication in the **Federal Register** on July 16, 2020. The commenters requested the Agency to comply with newly published CEQ requirements.

*Agency Response:* The Agency is in the process of reviewing the new requirements and has determined not to make any changes to OneRD at this

time. However, any appropriate conforming changes necessitated from updates to 7 CFR 1970, Environmental Policies and Procedures” will be made to 7 CFR 5001 to ensure compliance with CEQ’s regulations.

*Section 5001.303 Applications for Loan Guarantee*

*Comment:* The Agency received three comments seeking some clarity and guidance on the need to now submit draft loan agreements. The commenters stated that one of the attractive features of the Agency guaranteed programs is the fact that lenders use their own debt and security instruments to document the loan. The way Section 5001.303 is currently written, the Agency is forcing lenders to modify their existing systems to meet the requirements.

*Agency Comment:* Based on the comments received, the Agency has identified several revisions to improve the clarity of Section 5001.303 and these revisions are included in Section III, Summary of Changes to Rule.

*Section 5001.304 Specific Application Requirements for CF Projects*

*Agency Comment:* The Agency has identified revisions needed to improve consistency and clarity of Section 5001.304; these revisions are included in Section III, Summary of Changes to Rule.

*Section 5001.318 B&I Project Priority Point System*

*Comments:* The Agency received a comment in reference to giving priority points to a loan which offers a decreased guarantee percentage on a B&I project. They pointed out that this would be giving priority points to a guaranteed loan for violating the rule.

*Agency Response:* The Agency agrees, it was not the intention to allow priority points be given to a guaranteed loan that decreases the guarantee percentage for the loan. Since OneRD sets the guaranteed percentage on an annual basis and does not allow for any deviations of the set guaranteed percentage, the Agency will no longer grant priority points for a guaranteed loan that decreases the maximum allowable guaranteed percentage. Therefore, 7 CFR 5001.318(c)(3) has been removed.

*Section 5001.401 Interest Rate Provisions*

*Agency Comment:* The Agency has identified a technical correction needed to improve clarity of Section 5001.401; this revision is included in Section III, Summary of Changes to Rule.

*Section 5001.407 Percentage of Loan Guarantee*

*Comments:* Nine commenters requested the Community Facility Program provide for a 90% guarantee as they believe that being capped at 80% in addition to the possibility of raising fees will discourage wide-spread lender participation in a market of non-profit borrowers who in many cases are providing critical services to the rural community.

*Agency Response:* While the Agency understands the concerns, no changes in the regulation are being made, however the Agency continues to do everything it can and will continue to review the fees and guarantee percentages on an annual basis to ensure there are no negative impacts on program participation.

*Section 5001.408 Participation or Assignment of Guaranteed Loan*

*Comments:* Since publication of the OneRD rule, the Agency has received feedback from lenders on the requirement to charge a minimum 50 basis point lender’s servicing fee in Section 5001.408(b) when selling to a holder or participating to another lender.

*Agency Response:* Based on the concerns we have heard during monthly lender office hours or through direct lender contact with program staff, the Agency has reviewed this policy and determined to remove this requirement and allow lenders to determine their own interest rate spreads when assigning to a holder or participating to another lender.

*Section 5001.451 Conditional Commitment*

*Comments:* The Agency received two comments regarding the lender requesting an extension of a conditional commitment based on the following statement in the regulation “no major changes have been made in the lender’s loan conditions and requirements and no material adverse changes in the borrower or the borrower’s financial condition have occurred since issuance of the conditional commitment.” The concern is what constitutes a “major” change to request a change. It was suggested that the word “major” be defined or to remove the word “major” to avoid confusion.

*Agency Response:* The Agency agrees with the comments and is revising the sentence to remove this language as changes are not included in an extension of a conditional commitment.

*Section 5001.452 Loan Closing and Conditions Precedent to Issuance of Loan Note Guarantee*

*Comment:* Four comments were received on loan closing and the conditions precedent to issuance of the Loan Note Guarantee. There was a concern with Section 5001.452 as it seems to limit the presentation of note sale assignment documents to USDA with or immediately after the guaranteed loan closing. Many lenders may choose to hold a loan for a period, then, based on the financial goals of the lender, sell the guaranteed portion of the loan at any point during the life of the loan.

*Agency Response:* The Agency concurs with the comments and is removing the text “any secondary market assignment documents,” as these documents are not required immediately after loan closing and may be submitted at any time subsequently.

*Comment:* Several comments were also received in reference to the requirement to obtain a title opinion or title insurance showing the borrower has good and marketable title to the real property and other collateral and all mortgages or other lien defects, restrictions, or encumbrances, if any. In most cases the guaranteed loan is closed based on a title commitment, which includes gap coverage until the issuance of a title insurance policy. Title companies can take weeks after a loan closing to issue title insurance policies. This requirement would leave the lender unable to fund the loan for weeks after a closing and filing of security instruments, as they await the receipt of the title insurance policy.

*Agency Response:* The Agency believes that this is a reasonable request, therefore the revisions have been made to § 5001.452(b)(8)(iii)(L)(2) and a new § 5001.452(b)(8)(iii)(L)(3) has been added to provide clarity.

*Section 5001.453 Issuance of the Loan Note Guarantee*

*Comment:* The Agency received a comment for clarification for the requirement of issuing a certificate of incumbency. The commenter stated some secondary market holders require the certificate of incumbency and signature and some do not require the certificate of incumbency and signature. Therefore, the certificate of incumbency and signature form should be eliminated. In lieu of the form, a certificate of incumbency and signature block should be included on the relevant forms, *i.e.*, lender’s agreement, loan note guarantee, and assignment

guarantee agreement to be completed when the form is originally prepared.

*Agency Response:* The Agency reviewed this request and determined that since some lenders require this form and some do not, we did not want to add this requirement to the “relevant” forms and leave as a stand-alone form that lenders may or may not complete based on their process.

#### *Section 5001.454 Guarantee Fee*

*Comment:* Two commenters had an issue with 7 CFR 5001.454(c) and the additional 0.50 percent guarantee fee for issuing the loan note guarantee prior to construction which may not be passed on to the borrower. The commenters stated rather than invite potential conflict with the lender, why not just accept that the fee is 0.50 percent higher for construction loans. It is a benefit to the borrower as well as to the lender. The borrower is likely not to have its project financed unless the lender obtains the guarantee during construction.

*Agency Response:* The Agency agrees with the lender’s comment that not allowing the lender to pass the fee on to the borrower may have unintended consequences. Issuing the guarantee prior to construction completion (enabling the borrower to avoid cost of construction financing) is a significant benefit to the borrower, therefore the Agency has removed this restriction.

#### *Section 5001.513 Interest Rate Changes*

*Comments:* Some commenters requested consideration be given to allowing a borrower to switch to a fixed interest rate even if it is higher than the variable rate in effect on the loan.

*Agency response:* The Agency reviewed this and has determined that if the borrower is requesting the rate change whether to a lower or a higher fixed rate, the Agency has removed the restriction of only allowing a rate change to a lower interest rate.

### **III. Summary of Changes to Rule**

1. The definition of “affiliate” is updated to further clarify what constitutes an affiliate.

2. The definition of “energy efficiency improvement” is updated to conform with 7 CFR 4280.

3. The definition of “existing business” is updated to further define what it means for an existing business to be in operation.

4. The definition of “new business” is updated to further define what it means for a new business to be in operation.

5. The definition of “final loss claim” is updated to correct an incorrect site reference.

6. The definition of “power purchase agreement” is updated to conform with 7 CFR 4280.

#### *Section 5001.8 Approvals, Regulations, and Forms*

Paragraph (a) is revised to clarify what constitutes an electronic signature.

Paragraph (d) is revised to update the website address where this regulation and forms referenced can be found.

Paragraph (e) is revised to clarify what constitutes an electronic signature for the Lender.

#### *7 CFR 5001.104 Exception Authority*

Paragraph (c) is revised to clarify when a utility project that is serving both rural and non-rural areas is eligible for a loan guarantee.

#### *7 CFR 5001.105 Eligible B&I Projects and Requirements*

1. The introductory paragraph is revised to clarify that the list of eligible projects is not an exhaustive list of the types of projects that will be considered as eligible B&I projects.

2. Paragraph (b)(1) is updated to clarify that a B&I guaranteed loan may be used for the purchase and development of land, buildings, or infrastructure for public or private commercial enterprises.

3. Paragraph (b)(8) is revised to clarify exclusion of owner-occupied housing in the B&I guarantee program.

4. Paragraphs (b)(9) and (b)(10) are combined and edited to clarify when B&I funds may be utilized to fund a CF project.

5. A new paragraph (b)(10) is added to clarify when B&I funds may be used for the development and construction of broadband and telecommunication systems, including modification of existing systems, that are not otherwise eligible under RUS, existing RUS borrowers, or if funding is not available in the eligible RUS program, subject to the public notice filing requirements of 7 CFR 1738.106(a) and the additional reporting requirements of 7 CFR 1738.107.

6. Paragraph (d)(1)(i) is revised to clarify the length of time the minimum balance sheet equity must be maintained.

7. Paragraph (d)(1)(ii) is revised to clarify the length of time the minimum balance sheet equity must be maintained.

8. Paragraph (d)(2)(i) is revised to clarify the length of time the minimum balance sheet equity must be maintained.

9. Paragraph (d)(2)(ii) is revised to clarify the length of time the minimum balance sheet equity must be maintained.

10. Paragraph (d)(3)(i) is revised to align it with Section 105(d)(2)(i).

11. Paragraph (d)(3)(ii) is revised to align it with Section 105(d)(2)(ii).

12. Paragraph (d)(4)(i) is revised to align it with Section 105(d)(2)(i).

13. Paragraph (d)(4)(ii) is revised to align it with Section 105(d)(2)(ii).

14. Paragraph (d)(5)(ii) is revised by removing the requirement for historical financial statements for personal loan guarantors, as this was added in error.

#### *7 CFR 5001.115 Ineligible Projects-General*

Paragraph (n) is amended to clarify when owner occupied housing is considered eligible and removed paragraph (s) the ineligibility of self-storage facilities.

#### *7 CFR 5001.121 Eligible Uses of Loan Funds*

(1) The introductory paragraph is updated to allow a recipient of a loan guarantee to use up to 10 percent of project funds to construct, improve, or acquire broadband infrastructure related to the project financed, to conform with the requirements of 7 CFR part 1980, subpart M.

(2) Paragraph 7 CFR 5001.121 (c)(6) is amended to revise the reference to a preliminary review.

#### *7 CFR 5001.126 Borrower Eligibility*

Paragraph (e) is amended to add a new subparagraph (3) End users, to conform with 7 CFR 4280. This revision brings consistency to REAP on the analysis of the eligibility of the applicant controlling interest of an end-user.

#### *7 CFR 5001.130 Lender Eligibility Requirements*

Paragraph (a) is amended to include new requirements for lenders to be registered in and maintain an account in the System for Award Management (SAM) to conform with 2 CFR 25.

#### *7 CFR 5001.141 New Market Tax Credits*

Paragraph (a)(2) is amended to revise an incorrect section reference.

#### *7 CFR 5001.202 Lender’s Credit Evaluation*

Paragraph (b)(5) is amended to clarify where to find the specific program requirements for supporting documentation.

*5001.204 Personal, Partnership, and Corporate Guarantees*

Paragraph (b) is amended to remove the reference to the Federal Credit Reform Act of 1990.

*7 CFR 5001.205 General Project Monitoring Requirements*

1. Paragraph (e)(2) is amended to provide clarity and consistency with § 5001.454(c).

2. Paragraph (e)(2)(ii) is amended to provide Lenders the opportunity to provide project monitoring under specific criteria.

3. Paragraph (f)(4) is amended to remove the words “and inspection reports” as this is covered in (f)(5).

*7 CFR 5001.303 Applications for Loan Guarantee*

1. Paragraph (b)(4)(ii) is amended to remove the words “and any guarantor(s)” as this requirement was unintentional and not required in previous B&I and REAP regulations.

2. Paragraph (b)(5) is renumbered to § 5001.303(c)(1) to improve flow and readability.

3. Paragraph (b)(5)(i) through (xiii) was moved to § 5001.451 and renumbered as (b)(3)(i) through (xiii) to improve flow and readability.

*7 CFR 5001.304 Specific Application Requirements for CF Projects*

1. Paragraph (a)(1) is revised to provide consistency with the B&I program.

2. Paragraph (b) is amended to add a new (4) to coincide with B&I’s requirements for feasibility studies.

*7 CFR 5001.318 B&I Project Priority Point System*

1. The introductory paragraph in § 5001.318 is amended to correct the total maximum points allowed to 100. This is being done as the points total changed with the removal of § 5001.318(c)(3).

2. Paragraph (c)(3) is removed as it gives priority points to decreasing the guarantee percentage which violates the policy in the regulation and paragraph (c)(4) becomes (c)(3).

*7 CFR 5001.401 Interest Rate Provisions*

Paragraph (d) is amended to clarify when a request for an interest rate change is to be made.

*7 CFR 5001.402 Term Length, Loan Schedule, and Repayment*

Paragraph (b)(3) is amended to clarify that the repayment schedule must be in consideration of the borrower’s cash flow as provided in § 5001.402(b).

*7 CFR 5001.408 Participation or Assignment of Guaranteed Loan*

Paragraph (b) is amended by removing the requirement of the lender to maintain a minimum servicing fee of 50 basis points from any holder. This will allow the lenders to determine their own interest rate spreads when selling to a holder or participating to another lender.

*7 CFR 5001.451 Conditional Commitment*

1. Paragraphs (b)(5)(i) through (xiii) have been moved from § 5001.303 to paragraphs (b)(3)(i) through (xiii) of § 5001.451 which will improve flow and readability.

2. The third sentence in paragraph (e) is amended to remove the text “major changes have been made in the lender’s loan conditions and requirements and no.” This requirement is not needed to consider an extension of the conditional commitment; therefore, it has been removed.

*7 CFR 5001.452 Loan Closing and Conditions Precedent to Issuance of Loan Note Guarantee*

1. Paragraph (b) is amended by deleting the text, “any secondary market assignment documents.” Such documents are not required immediately after loan closing and may be submitted at any time subsequently.

2. Paragraph (b)(8)(iii)(L)(2) is amended by adding that a commitment for title insurance or title commitment, when including gap coverage, is acceptable and to clarify that a title opinion or title commitment is not required for anything other than real estate.

*7 CFR 5001.454 Guarantee Fee*

Paragraph (c) is amended by removing the restriction of the lender not being able to pass the additional .50 percent on to the borrower when issuing the loan note guarantee prior to construction.

*7 CFR 5001.513 Interest Rate Changes*

Paragraph (e) is amended to allow variable rate changes to be changed to fixed rates whether the fixed rate is higher or lower at the request of the borrower, agreement of the holder, if any, and Agency concurrence.

*Subpart G—Delegations and Loan Approval Authorities*

Sections 5001.601 through 5001.603 are added to define basic information on delegation and loan approval authorities for the programs within the OneRD regulation.

**IV. Executive Orders and Acts****Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches to maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

**National Environmental Policy Act**

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

**Executive Order 12988, Civil Justice Reform**

This final rule has been reviewed under Executive Order 12988 (Civil Justice Reform). The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that conflict with this rule will be preempted. No retroactive effect will be given to this rule.

**Executive Order 13132, Federalism**

The policies contained in this final rule do 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. Nor does this rule impose substantial direct

compliance costs on state and local governments. Therefore, consultation with the states is not required.

### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (“APA”) or any other statute. The APA exempts from notice and comment requirements rules “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

### Executive Order 12372, Intergovernmental Consultation

This final rule is excluded from the scope of Executive Order 12372 (Intergovernmental Consultation), which may require a consultation with State and local officials. See the final rule related notice entitled, “Department Programs and Activities Excluded from Executive Order 12372” (50 FR 47034).

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

This executive order imposes requirements on the Agency. The Agency has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with the Agency on this rule, they are encouraged to contact USDA’s Office of Tribal Relations or the Agency’s Native American Coordinator at: [AIAN@usda.gov](mailto:AIAN@usda.gov) to request such a consultation.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) numbers assigned to the 4 programs within this rule are: 10.766 for Community Facility Programs, 10.760 for Water and Waste Disposal Programs, 10.768 for Business and Industry Programs and 10.868 for Rural Energy for America Program. The Catalog is available on the internet at <https://beta.sam.gov>. The *SAM.gov* website also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing

Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the CFDA from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO’s online bookstore at <http://bookstore.gpo.gov>.

### Paperwork Reduction Act and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0166 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

### E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act of 2002, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

### Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, or marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this Final Rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

### USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA Programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for

program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA’s TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *email*: [OAC@usda.gov](mailto:OAC@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

### List of Subjects in 7 CFR Part 5001

Business and industry, Community facility, Energy efficiency improvement, Loan programs, Renewable energy, Rural areas, Rural development, Water and waste disposal.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301 and 7 U.S.C. 1989, Chapter L of title 7 of the Code of Federal Regulations is amended as follows:

### PART 5001—GUARANTEED LOANS

■ 1. The authority citation for part 5001 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1926(a); 7 U.S.C. 1932(a); and 7 U.S.C. 8107.

### Subpart A—General Provisions

■ 2. Amend § 5001.3 by:

- A. Removing the definition “Affiliates”;
- B. Adding the definition “Affiliate”;
- C. Revising the definition “Energy efficiency improvement (EEI)”;
- D. Revising the first sentence in the definition “Existing business”;
- E. Revising the definition “Final loss claim”;
- F. Revising the definition “New business”; and
- G. Revising the definition “Power purchase agreement”.

The addition and revisions read as follows:

**§ 5001.3 Definitions.**

\* \* \* \* \*

*Affiliate* means a person where one of the following circumstances exists:

(1) The person controls or has the power to control another person, or a third party or parties' controls or has the power to control both. Factors such as ownership, management, current and previous relationships with or ties to another person, and contractual relationships, shall be considered in determining whether affiliation exists. It does not matter whether control is actually exercised, so long as the power to control exists. Entities owned and controlled by Indian Tribes, Alaskan Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs), or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other entities owned by these entities solely because of their common ownership or common management.

(2) There is a family relationship and identical or substantially identical business or economic interests amongst persons (such as where the immediate family operate entities in the same or similar industry in the same geographic area); however, a person may rebut such determination with evidence showing that the business or economic interests are not identical or substantially identical.

\* \* \* \* \*

*Energy efficiency improvement (EEI)* means improvements to or replacement of an existing building or systems, or equipment owned by the borrower, that reduces measurable energy consumption on an annual basis.

\* \* \* \* \*

*Existing business* means a business that has been in operation for at least one full year and has achieved full operational capacity or stable operations as determined by the Administrator.

\* \* \*

\* \* \* \* \*

*Final loss claim* means the Agency's payment of a final settlement amount with the lender after the collateral is liquidated or after settlement and compromise actions have been completed and as further set forth in § 5001.521(e).

\* \* \* \* \*

*New business* means a business that has been in operation for less than one full year and a business that has been in operation for at least one full year and has not achieved full operational capacity or stable operations as determined by the Administrator, including a new enterprise or new

affiliate of an existing business moving or expanding into a new location involving new market or labor areas.

\* \* \* \* \*

*Power purchase agreement* means the terms and conditions governing the sale and transportation of power produced by the borrower to another party.

\* \* \* \* \*

■ 3. Amend § 5001.8 by revising paragraph (a) and adding paragraph (e) to read as follows:

**§ 5001.8 Approvals, regulations, and forms.**

(a) When Agency approval or concurrence is required, it must be in writing and must be obtained prior to any action taken for which approval or concurrence is required. Written communication from an authorized Agency official, including any written communication approving, concurring, or otherwise communicating an Agency decision on a matter when such decision is required, may be transmitted via an electronic Agency system in accordance with Electronic Signatures in Global and National Commerce Act (ESIGN) of 2000 (114 Stat. 464) (E-Sign Act).

\* \* \* \* \*

(e) 7 CFR part 5001 does not prohibit or consent to electronic signatures. Rural Development will accept electronic signatures from Lenders for origination, loan closing, and servicing documents in accordance with the E-Sign Act unless otherwise prohibited by law or program. Lenders may use electronic signatures for electronic promissory notes (eNotes), deeds of trust and other documents relevant to the loan transaction, providing that the lender perfects and maintains a first lien position, an enforceable promissory note, and meets all other agency requirements including the following:

(1) Lenders may submit forms to Rural Development electronically using USDA's Service Center Agencies Online Services website. Registration is limited to individuals and each individual authorized by the Lender must register and upon registration may electronically sign and submit certain forms on behalf of the Lender.

(2) Lenders who choose to accept electronic signatures from borrowers must ensure that such signatures meet the standards and requirements set forth in the E-Sign Act, as well as all other applicable federal and state regulations and guidelines. Lenders are charged with the same responsibility of due diligence with electronically signed documents as they are with paper documents. If any electronically signed

document is deemed unenforceable and is connected to any fraud, misrepresentation or negligent servicing, the lender bears the risk that any loss claim submitted in relation to the unenforceable document will be denied or reduced in accordance with applicable regulations. Any loss attributed to a lender's failure to collect on the promissory note or enforce the security instrument because of its electronic signature will be treated as negligent servicing under 7 CFR 5001 servicing regulations. Failure to comply with any Federal statute or regulation could result in the denial of a loan guarantee or claim, withdrawal of lending authority and/or debarment from Federal programs.

**Subpart B—Eligibility Provisions**

■ 4. Amend § 5001.104 by revising paragraph (c) to read as follows:

**§ 5001.104 Eligible WWD projects and requirements.**

\* \* \* \* \*

(c) *Project location.* The project must be located in a rural area as defined in § 5001.3 of this part, except that utility projects serving both rural and non-rural areas are eligible for a loan guarantee regardless of project location. For utility service projects serving both rural and non-rural areas, the Agency will guarantee only the portion of the project necessary to provide the essential services to rural areas. The part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas.

\* \* \* \* \*

■ 5. Amend § 5001.105 by:

- A. Revising the introductory text;
  - B. Revising paragraph (b)(1), (8), (9) and (10);
  - C. Revising paragraph (d)(1)(i) and (ii);
  - D. Revising paragraph (d)(2)(i) and (ii);
  - E. Revising paragraph (d)(3)(i) and (ii);
  - F. Revising paragraph (d)(4)(i) and (ii); and
  - G. Revising paragraph (d)(5)(ii)
- The revisions read as follows:

**§ 5001.105 Eligible B&I projects and requirements.**

For a B&I project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102, be for a borrower eligible to submit an application for the project in accordance with § 5001.126, and the uses of loan funds include, but are not limited to, the following:

\* \* \* \* \*

(b) \* \* \*

(1) Purchase and development of land, buildings, or infrastructure for

public or private commercial enterprises or industrial properties, including expansion or modernization.

\* \* \* \* \*

(8) Tourist and recreation facilities, including hotels, motels, bed and breakfast establishments, and resort trailer parks and campgrounds operated as a public or private commercial enterprise. Owner-occupied housing, such as bed and breakfasts, hotels and motels are only allowed when the pro rata value of a direct owner's living quarters, based on square footage, is deducted from the use of loan proceeds.

(9) Educational or training facilities including other CF projects when not eligible for financing through Rural Housing Service or Community Facilities programs.

(10) Development and construction of broadband and telecommunication systems, including modification of existing systems, that are not otherwise eligible for funding in the RUS program or if funding is unavailable in the RUS program, subject to the Public Notice Filing requirements of 7 CFR 1738.106(a) and the additional reporting requirements of 7 CFR 1738.107.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-balance sheet equity ratio of 9 to 1, at loan closing;

(ii) A 10 percent or more of total eligible project costs, borrower investment of equity or other funds into the project including grants or subordinated debt when subject to a standstill agreement for the life of the loan;

\* \* \* \* \*

(2) \* \* \*

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-balance sheet equity ratio of 9 to 1 at loan closing; or

(ii) Borrower investment of equity or other funds (including subordinated debt when subject to a standstill agreement for the life of the loan and grants) into the project in an amount of 10 percent or more of total eligible project cost;

(3) \* \* \*

(i) A minimum of 25 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-equity ratio of 3 to 1, at guaranteed loan closing; or

(ii) Borrower investment of equity or other funds (including subordinated debt when subject to a standstill agreement for the life of the loan and grants) into the project in an amount of 25 percent or more of total eligible project cost;

(4) \* \* \*

(i) A minimum of 20 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-equity ratio of 4 to 1, at guaranteed loan closing; or;

(ii) Borrower investment of equity or other funds (including subordinated debt when subject to a standstill agreement for the life of the loan and grants) into the project in an amount of 25 percent or more of total eligible project cost;

(5) \* \* \*

(ii) *Reductions.* The Agency may reduce the minimum equity requirement for an existing business when personal or corporate guarantees are obtained in accordance with § 5001.204 of this part; and all pro forma statements indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, and debt service coverage ratio.

\* \* \* \* \*

■ 6. Amend § 5001.115 by revising paragraph (n) to read as follows:

**§ 5001.115 Ineligible projects—general.**

\* \* \* \* \*

(n) Except as provided in § 5001.105(b)(8), owner-occupied housing.

\* \* \* \* \*

**§ 5001.115 [Amended]**

■ 7. Amend § 5001.115 by removing paragraph (s).

■ 8. Amend § 5001.121 by revising the introductory paragraph and paragraph (c)(6) to read as follows:

**§ 5001.121 Eligible uses of loan funds.**

Guaranteed loan funds can only be used for the items specified in this section. In addition, RD may allow a recipient of a loan guarantee under this Part to use up to 10 percent of project funds to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

\* \* \* \* \*

(c) \* \* \*

(6) Takeout of interim financing; Guaranteeing a loan that provides for

permanent, long-term financing after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete request for preliminary eligibility review or complete application that proposes such interim financing prior to closing the interim loan. The borrower must take no action until the conclusion of the environmental review process prior to any action that would have an adverse effect on the environment or limit the choices of any reasonable alternatives to be considered by the Agency.

■ 9. Amend § 5001.126 by redesignating paragraphs (e)(3) through (4) as paragraphs (e)(4) through (5) and adding a new (e)(3) to read as follows:

**§ 5001.126 Borrower eligibility.**

\* \* \* \* \*

(3) *End users.* If the controlling interest in the applicant entity is otherwise eligible as an applicant and a legal transaction between two parties for the sale of energy in an open market is being proposed, the Agency will not consider the energy end-users as part of the analysis of the eligibility of the applicant. However, if the proposed end-user would be an ineligible applicant, such as an entity which is residential in nature or a non-profit entity, and the REAP applicant entity is a newly formed special-purpose entity with substantially the same ownership as the proposed end-user, then the REAP applicant entity is not eligible.

■ 10. Amend § 5001.130 by adding paragraph (a)(6) to read as follows:

**§ 5001.130 Lender eligibility requirements.**

\* \* \* \* \*

(a) \* \* \*

(6) Be registered in and maintain an account in the System for Award Management (SAM) in accordance with 2 CFR 25.200.

\* \* \* \* \*

■ 11. Amend § 5001.141 by revising paragraph (a)(2) to read as follows:

**§ 5001.141 New markets tax credits.**

\* \* \* \* \*

(a) \* \* \*

(2) The provisions of § 5001.127(f) notwithstanding, a lender that is a CDE or sub-CDE may have an ownership interest in the borrower provided that each condition specified in paragraphs (a)(2)(i) through (iii) of this section is met.

\* \* \* \* \*

**Subpart C—Origination Provisions**

■ 12. Amend § 5001.202 by revising paragraph (b)(5) to read as follows:



**§ 5001.202 Lender's credit evaluation.**

\* \* \* \* \*

(b) \* \* \*

(5) *Conditions.* This factor refers to the general business environment, including the regulatory environment affecting the business or industry, and status of the Borrower's industry. Consideration will be given to items listed below and, when applicable, the lender should submit supporting documentation (e.g., feasibility study, market study, preliminary architectural or engineering reports, etc.) in accordance with §§ 5001.304 through 5001.307:

\* \* \* \* \*

- 13. Amend § 5001.204 by revising paragraph (b) to read as follows:

**§ 5001.204 Personal, partnership, and corporate guarantees.**

\* \* \* \* \*

(b) When warranted by an Agency assessment of potential financial risk, the Agency may require the following:

\* \* \* \* \*

- 14. Amend § 5001.205 by revising paragraphs (e)(2) introductory text, (e)(2)(ii) and (f)(4) to read as follows:

**§ 5001.205 General project monitoring requirements.**

\* \* \* \* \*

(e) \* \* \*

(2) *Issuance of loan note guarantee prior to completion of the project's construction.* Except for projects utilizing non-proven technologies, the lender may request that the loan note guarantee be issued prior to completion of a project's construction. The lender's request will be considered by the Agency, who may require credit risk mitigation. An additional fee for issuance of the loan note guarantee prior to completion of the project's construction will be assessed in accordance with § 5001.454(c) in subpart E. The lender must verify and include evidence of the following in its request:

\* \* \* \* \*

(ii) The borrower and lender have entered into a contract with an independent disbursement and monitoring firm with a construction monitoring plan acceptable to and approved by the Agency or, the lender documents that they have the capacity and experience to disburse funds and provides a monitoring plan acceptable to the Agency;

\* \* \* \* \*

(f) \* \* \*

(4) Status of construction; and

\* \* \* \* \*

**Subpart D—Guarantee Application Provisions**

- 15. Amend § 5001.303 by:
  - A. Revising paragraph (b)(4)(ii);
  - B. Redesignating paragraphs (c)(1) through (18) as paragraphs (c)(2) through (19).
  - C. Redesignating (b)(5) introductory text as paragraph (c)(1);
  - D. Removing paragraphs (b)(5)(i) through (xiii);
  - E. Redesignating paragraphs (b)(6) and (7) as paragraphs (b)(5) and (6);
  - F. Revising the newly redesignated paragraph (c)(1).

The revisions read as follows:

**§ 5001.303 Applications for loan guarantee**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) Agency-acceptable historical balance sheet, income statements, and cash flow statements of the borrower for the lesser of the last three fiscal years or all years of operation; and

(c) \* \* \*

(1) For all applications of \$600,000 or greater, a draft loan agreement for the guaranteed loan.

\* \* \* \* \*

- 16. Amend § 5001.304 by revising paragraph (a)(1) and adding paragraph (a)(4) to read as follows:

**§ 5001.304 Specific application requirements for CF projects.**

\* \* \* \* \*

(a) \* \* \*

(1) Guaranteed loans of \$25 million or less to existing community facilities;

\* \* \* \* \*

(4) The Agency may require a Feasibility Study when the lender's analysis, borrower's business plan, or project information is not sufficient to determine the technical feasibility, market feasibility, or economic viability of the project.

(i) For guaranteed loans greater than \$1,000,000.00 to a new entity or an entity conducting a new activity, a feasibility study prepared by an independent qualified consultant acceptable to the Agency is required. The scope of the feasibility study will be determined by the Agency and is dependent on the complexity of the project and the borrower.

(ii) For loans of \$1,000,000.00 or less to new and existing entities, the Agency may require a feasibility study when the lender's analysis or other borrower information is not sufficient to determine the technical feasibility or economic viability of the project, or if the project will significantly affect the

operations of a borrower who is an existing entity and its historic cash flow.

\* \* \* \* \*

- 17. Amend § 5001.318 by:
  - (a) Revising the introductory paragraph;
  - (b) Revising the introductory text of paragraph (c);
  - (c) Removing paragraph (c)(3); and
  - (d) Redesignating paragraph (c)(4) as paragraph (c)(3).

The revision reads as follows:

**§ 5001.318 B&I project priority point system.**

This section applies to B&I projects seeking a loan guarantee. When applications on hand have the same priority score, the Agency will give preference to applications involving guaranteed loans from veterans. To receive veteran points, a veteran or veterans must own 20 percent or more interest in the borrower and the borrower must sign a certification in its application to indicate that the borrower has veteran status. A maximum of 100 points can be awarded.

\* \* \* \* \*

(c) *Guaranteed loan features.* An application is eligible to receive points under each of the categories identified in paragraphs (c)(1) through (3) of this section as follows:

\* \* \* \* \*

**Subpart E—Loan and Guarantee Provisions**

- 18. Amend § 5001.401 by revising paragraph (d) to read as follows:

**§ 5001.401 Interest rate provisions.**

\* \* \* \* \*

(d) *Interest rate changes.* Any change in the base rate or fixed interest rate between issuance of the conditional commitment and loan closing must be approved by the Agency. Approval of such a change must be shown as an amendment to the conditional commitment and must be reflected on the guaranteed loan closing report form.

- 19. Amend § 5001.402 by revising paragraph (b)(3) to read as follows:

**§ 5001.402 Term length, loan schedule, and repayment.**

\* \* \* \* \*

(b) \* \* \*

(3) If the promissory note provides for an interest-only period, interest must be paid at least annually starting on a date that is no more than one year from the date of the promissory note. Scheduling of the first payment of principal and interest will be subject to consideration of whether the facility is operational and generates adequate income.

However, the scheduling of the first full principal and interest payment must commence not more than 3 years from the date of the promissory note and be paid at least annually thereafter.

\* \* \* \* \*

■ 20. Amend § 5001.408 by revising paragraph (b) to read as follows:

§ 5001.408 Participation or assignment of guaranteed loan.

\* \* \* \* \*

(b) Lender's servicing fee to holder. The assignment guarantee agreement must clearly state the guarantee portion of loan as a percentage and corresponding dollar amount of the guaranteed portion of the guaranteed loan it represents and the lender's servicing fee. The lender cannot charge the Agency a servicing fee and servicing fees are not eligible expenses for loss claim.

\* \* \* \* \*

■ 21. Amend § 5001.451 by revising (b)(3) and (e) to read as follows:

§ 5001.451 Conditional commitment.

\* \* \* \* \*

(b) \* \* \*

(3) Loan agreement requirements to include:

(i) Repayment terms and amortization provisions of the guaranteed loan;

(ii) Description of real property collateral, list of other collateral and identification of the lender's lien priority in the collateral;

(iii) A list of persons and entities guaranteeing payment of the guaranteed loan and their percentage of guarantee;

(iv) Requirement as to the type and frequency of the financial statements to be required for the duration of the guaranteed loan (guarantor statements must be updated at least annually);

(v) Prohibition against borrower assuming liabilities or obligations of others;

(vi) Limitations on borrower dividend payments and compensation of officers, owners and members of borrower;

(vii) Limitations on the purchase and sale of equipment other fixed assets and real estate;

(viii) Restrictions on mergers, consolidations, or sales of the business, project, or guarantee loan collateral without the concurrence of the lender;

(ix) Limitations on significant management changes without the concurrence of the lender;

(x) Maximum debt-to-net worth ratio, when required by the lender or by this part;

(xi) Minimum debt service coverage ratio, when required by the lender or by this part;

(xii) Requirements imposed by the Agency in its conditional commitment;

(xiii) Agency environmental requirements; and

(xiii) Requirement for the lender and the Agency to have reasonable access to the project and financial records including access for periodic inspections of the project and financial records by a representative of the lender or the Agency; and

(xiv) Requirement for the borrower to provide the lender and the Agency performance information during the term of the guaranteed loan.

\* \* \* \* \*

(e) Modification, and expiration of conditional commitment. The conditional commitment issued by the Agency will be effective for a period of one year or sufficient time to complete the guaranteed loan project prior to loan closing. The lender must submit a written request to the Agency to extend the conditional commitment at least 30 days prior to its expiration date and obtain Agency approval for the extension. The Agency will consider this request only if no material adverse changes in the borrower or the borrower's financial condition have occurred since issuance of the conditional commitment. If a conditional commitment expires, the Agency will notify the lender in writing and may de-obligate the funds. Any additions or modifications to conditions stated in the original conditional commitment must be agreed upon between the lender, the borrower, and the Agency.

■ 22. Amend § 5001.452 by revising paragraphs (b) introductory text and (b)(8)(iii)(L)(2) and adding paragraph (b)(8)(iii)(L)(3) to read as follows:

§ 5001.452 Loan closing and conditions precedent to issuance of loan note guarantee.

\* \* \* \* \*

(b) Simultaneously with or immediately after the guaranteed loan closing, the lender must provide to the Agency the guarantee fee, and the following forms and documents:

\* \* \* \* \*

(8) \* \* \*

(iii) \* \* \*

(L) \* \* \*

(2) A title opinion or title insurance showing the borrower has good and marketable title to the real property and other collateral and fully addressing all existing mortgages or other lien defects, restrictions or encumbrances. In those cases where there is adequate gap coverage, a title commitment may be acceptable.

\* \* \* \* \*

■ 23. Amend § 5001.454 by revising paragraph (c) to read as follows:

§ 5001.454 Guarantee fee.

\* \* \* \* \*

(c) Loan note guarantee prior to completion. If the loan note guarantee is issued prior to completion of the project's construction under § 5001.205(e)(2), an additional guarantee fee of 0.50 percent will be added.

\* \* \* \* \*

Subpart F—Servicing Provisions

■ 24. Amend § 5001.513 by revising paragraph (e) to read as follows:

§ 5001.513 Interest rate changes.

\* \* \* \* \*

(e) Variable rate to fixed rate change. Variable rates can be changed to a fixed rate at the request of the borrower, agreement of the holder, if any, and Agency concurrence.

\* \* \* \* \*

Justin Maxson,

Deputy Under Secretary, Rural Development.

[FR Doc. 2021-26160 Filed 12-9-21; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0829; Project Identifier MCAI-2021-00189-R; Amendment 39-21829; AD 2021-24-08]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021-04-21, which applies to certain Airbus Helicopters Model EC120B helicopters. AD 2021-04-21 required an inspection of the attachment bolts of the main rotor (MR) hub scissors assembly for discrepancies and repair if necessary; part marking of the attachment bolts of the MR hub scissors assembly; and repetitive inspections of the part marking of the attachment bolts, and repair if necessary. This AD continues to require the actions in AD 2021-04-21; and also requires part marking of the washer, scissor branch, and mast ring of the corresponding nut side, and repetitive inspections of the additional part markings and repair if necessary; as

specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD was prompted by a report of broken and bent attachment bolts of the MR hub scissors assembly and a determination that additional part markings of the washer, scissor branch, and mast ring of the corresponding nut side, and repetitive inspections of those part markings, are necessary to detect any rotation. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective January 14, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 14, 2022.

**ADDRESSES:** For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet: [www.easa.europa.eu](http://www.easa.europa.eu). You may find this material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817-222-5110. It is also available in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0829.

**Examining the AD Docket**

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0829; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Hal Jensen, Aerospace Engineer, Operational

Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267-9167; email: [hal.jensen@faa.gov](mailto:hal.jensen@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021-0046, dated February 12, 2021 (EASA AD 2021-0046) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model EC120B helicopters. Although EASA AD 2021-0046 applies to all Model EC120B helicopters, this AD applies to helicopters with an affected part installed instead.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021-04-21, Amendment 39-21443 (86 FR 17278, April 2, 2021) (AD 2021-04-21). AD 2021-04-21 applied to certain Airbus Helicopters Model EC120B helicopters. The NPRM published in the **Federal Register** on September 23, 2021 (86 FR 52859). The NPRM was prompted by a report of broken and bent attachment bolts of the MR hub scissors assembly and a determination that additional part markings of the washer, scissor branch, and mast ring of the corresponding nut side, and repetitive inspections of those part markings, are necessary to detect any rotation. The NPRM proposed to continue to require the actions in AD 2021-04-21, as specified in an EASA AD. The NPRM also proposed to require part marking of the washer, scissor branch, and mast ring of the corresponding nut side, and repetitive inspections of the additional part markings and repair if necessary, as specified in an EASA AD.

The FAA is issuing this AD to address broken and bent attachment bolts of the MR hub scissors assembly, which could lead to detachment of a MR hub scissors attachment bolt, possibly resulting in complete loss of control of the helicopter. See the MCAI for additional background information.

**Discussion of Final Airworthiness Directive**

**Comments**

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

**Conclusion**

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

EASA AD 2021-0046 specifies procedures for an inspection of the attachment bolts of the MR hub scissors assembly for discrepancies (discrepancies include corrosion, fretting, wear, cracking, bolt play, and bolt tightening torque) and repair if necessary; part marking of the washer, scissor branch, and mast ring of the attachment bolts and corresponding nut side of the MR hub scissors assembly; and repetitive inspections, after part marking, for discrepancies, and repair if necessary. The inspections of the attachment bolts of the MR hub assembly include checking the play and torque of the scissors attachment bolts and making sure that there are no hard spots in the scissors link hinge.

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

**Costs of Compliance**

The FAA estimates that this AD affects 89 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for discrepancies (retained actions from AD 2021-04-21).	4 work-hours × \$85 per hour = \$340.	\$0	\$340 .....	\$30,260.
Part Marking (retained actions from AD 2021-04-21).	1 work-hour × \$85 per hour = \$85.	0	\$85 .....	\$7,565.
Repetitive Inspection of Markings (retained actions from AD 2021-04-21).	1 work-hour × \$85 per hour = \$85 per inspection cycle.	0	\$85 per inspection cycle ..	\$7,565 per inspection cycle.

ESTIMATED COSTS FOR REQUIRED ACTIONS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Additional Part Marking (new action) .....	1 work-hour × \$85 per hour = \$85.	0	\$85 .....	\$7,565.
Repetitive Inspection (new action) .....	1 work-hours × \$85 per hour = \$85 per inspection cycle.	0	\$85 per inspection cycle ..	\$7,565 per inspection cycle.

The FAA estimates that it would take about 1 hour per product to comply with the reporting requirement in this AD. The average labor rate is \$85 per hour. Based on these figures, the FAA

estimates the cost of reporting on U.S. operators to be \$7,565, or \$85 per product.

The FAA estimates the following costs to do any necessary on-condition

actions that would be required based on the results of any required actions. The FAA has no way of determining the number of helicopters that might need these on-condition actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair of the attachment bolts .....	4 work-hours × \$85 per hour = \$340 .....	\$40	\$380

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Pkwy., Fort Worth, TX 76177–1524.

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

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

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

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

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

**The Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

- 2. The FAA amends § 39.13 by:
  - a. Removing Airworthiness Directive (AD) 2021–04–21, Amendment 39–21443 (86 FR 17278, April 2, 2021); and
  - b. Adding the following new AD:

**2021–24–08 Airbus Helicopters:**  
Amendment 39–21829; Docket No. FAA–2021–0829; Project Identifier MCAI–2021–00189–R.

**(a) Effective Date**

This airworthiness directive (AD) is effective January 14, 2022.

**(b) Affected ADs**

This AD replaces AD 2021–04–21, Amendment 39–21443 (86 FR 17278, April 2, 2021) (AD 2021–04–21).

**(c) Applicability**

This AD applies to Airbus Helicopters Model EC120B helicopters, certificated in any category, having an affected part as defined in European Union Aviation Safety Agency (EASA) AD 2021–0046, dated February 12, 2021 (EASA AD 2021–0046).

**(d) Subject**

Joint Aircraft System Component (JASC) Code 6200, Main Rotor System.

**(e) Unsafe Condition**

This AD was prompted by a report of broken and bent attachment bolts of the main rotor (MR) hub scissors assembly and a determination that additional part markings of the washer, scissor branch, and mast ring of the corresponding nut side, and repetitive inspections of those part markings, are necessary to detect any rotation. The FAA is

issuing this AD to address broken and bent attachment bolts of the MR hub scissors assembly, which could lead to detachment of a MR hub scissors attachment bolt, possibly resulting in complete loss of control of the helicopter.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0046.

**(h) Exceptions to EASA AD 2021–0046**

(1) Where EASA AD 2021–0046 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2021–0046 refers to September 05, 2018 (the effective date of EASA AD 2018–0186), this AD requires using May 7, 2021 (the effective date of AD 2021–04–21).

(3) This AD does not mandate compliance with the “Remarks” section of EASA AD 2021–0046.

(4) Where the service information referenced in EASA AD 2021–0046 specifies to discard certain parts, this AD requires removing those parts from service.

(5) Where EASA AD 2021–0046 refers to flight hours (FH), this AD requires using hours time-in-service.

(6) Paragraphs (3) and (4) of EASA AD 2021–0046 refer to “discrepancies.” For this AD, discrepancies include corrosion, fretting, wear, cracking, bolt play, twist, shearing, rupture, and bolt tightening torque.

(7) Where EASA AD 2021–0046 specifies to contact the manufacturer for repair instructions, this AD requires the repair to be done in accordance with a method approved by the Manager, General Aviation and Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopter’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(8) Paragraph (5) of EASA AD 2021–0046 specifies to report inspection results to Airbus Helicopters within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(8)(i) or (ii) of this AD.

(i) If the inspection was done on or after May 7, 2021 (the effective date of AD 2021–04–21): Submit the report within 30 days after the inspection.

(ii) If the inspection was done before May 7, 2021 (the effective date of AD 2021–04–21): Submit the report within 30 days after May 7, 2021.

**(i) Special Flight Permit**

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

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

(1) The Manager, International Validation Branch, FAA, has the authority to approve

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

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

**(k) Related Information**

For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L’Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267–9167; email: hal.jensen@faa.gov.

**(l) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0046, dated February 12, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0046, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; Internet: www.easa.europa.eu. You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0829.

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

Issued on November 15, 2021.

**Lance T. Gant,**

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–26680 Filed 12–9–21; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA–2021–0826; Project Identifier MCAI–2021–00300–R; Amendment 39–21826; AD 2021–24–05]

RIN 2120–AA64

**Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH Model EC135P2+, EC135P3, EC135T2+, and EC135T3 helicopters. This AD was prompted by reports that certain aft and forward fitting assemblies, which are not approved for installation on certain helicopters, were installed on those helicopters as part of the outboard load system. Operators of those helicopters might not be aware of the applicable overhaul or life limits for those fitting assemblies. This AD requires inspecting the aft and forward fitting assemblies of the outboard load system to determine the part number, re-identifying the part if necessary, inspecting each affected part for damage (which may be indicated by signs of corrosion, mechanical damage, loose rivets, or cracks) and, depending on the findings, corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective January 14, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 14, 2022.

**ADDRESSES:** For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available in the AD docket at <https://www.regulations.gov>

www.regulations.gov by searching for and locating Docket No. FAA–2021–0826.

**Examining the AD Docket**

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0826; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email [Darren.Gassetto@faa.gov](mailto:Darren.Gassetto@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0066, dated March 8, 2021 (EASA AD 2021–0066), to correct an unsafe condition for Airbus Helicopters Deutschland GmbH (formerly Eurocopter Deutschland GmbH and Eurocopter España S.A.) Model EC135 P2+, EC135 P3, EC135 T2+, EC135 T3, EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, and EC635 T3 helicopters, serial numbers (S/Ns) 0866 to 1166 inclusive, except S/Ns 1007, 1102, and 1145, and except helicopters on which Airbus Helicopters Service Bulletin EC135–85–063 has been embodied in service. Model EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, and

EC635 T3 helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet, except where the U.S. type certificate data sheet explains that the Model EC635T2+ helicopter having serial number 0858 was converted from Model EC635T2+ to Model EC135T2+. This AD, therefore, does not include Model EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, and EC635 T3 helicopters in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Helicopters Deutschland GmbH Model EC135P2+, EC135P3, EC135T2+, and EC135T3 helicopters. The NPRM published in the **Federal Register** on September 23, 2021 (86 FR 52851). The NPRM was prompted by reports that aft and forward fitting assemblies, having part number L851M2810103, were installed as part of the outboard load system on helicopters having S/Ns 0886 and up. The affected fitting assemblies are not approved for installation on helicopters having those serial numbers. Operators of those helicopters might not be aware of the applicable overhaul or life limits for those fitting assemblies. The NPRM proposed to require inspecting the aft and forward fitting assemblies of the outboard load system to determine the part number, re-identifying the part if necessary, inspecting each affected part for damage (which may be indicated by signs of corrosion, mechanical damage, loose rivets, or cracks) and, depending on the findings, corrective actions, as specified in EASA AD 2021–0066.

The FAA is issuing this AD to address failure of affected aft and forward fitting assemblies and consequent loss of external cargo, resulting in personal injury or injury to persons on the ground. See EASA AD 2021–0066 for additional background information.

**Discussion of Final Airworthiness Directive**

**Comments**

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

**Conclusion**

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

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

EASA AD 2021–0066 requires a onetime inspection of each aft and forward fitting assembly of the outboard load system to identify the part number, re-identifying the part number if necessary, a one-time inspection of an affected fitting assembly for damage, and corrective action. The corrective action includes replacing any damaged fitting.

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

**Costs of Compliance**

The FAA estimates that this AD affects 69 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this AD.

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection to determine fitting assembly part number.	0.50 work-hour × \$85 per hour = \$42.50 .....	\$0	\$42.50	\$2,932.50

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

of the inspection. The agency has no way of determining the number of

helicopters that might need these actions:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Re-identification of affected fitting assembly with part number.	0.25 work-hour × \$85 per hour = \$21.25 .....	\$0	\$21.25

## ON-CONDITION COSTS—Continued

Action	Labor cost	Parts cost	Cost per product
Detailed inspection of affected fitting assembly .....	1.75 work-hours × \$85 per hour = \$148.75 .....	0	148.75
Replacement of damaged affected fitting assembly ....	1.50 work-hours × \$85 per hour = \$127.50 .....	1,363	1,490.50

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**The Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2021–24–05 Airbus Helicopters**

**Deutschland GmbH:** Amendment 39–21826; Docket No. FAA–2021–0826; Project Identifier MCAI–2021–00300–R.

**(a) Effective Date**

This airworthiness directive (AD) is effective January 14, 2022.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus Helicopters Deutschland GmbH Model EC135P2+, EC135P3, EC135T2+, and EC135T3 helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0066, dated March 8, 2021 (EASA AD 2021–0066).

**(d) Subject**

Joint Aircraft Service Component (JASC) Code: 2550, Cargo Compartments.

**(e) Unsafe Condition**

This AD was prompted by reports that certain aft and forward fitting assemblies, which are not approved for installation on certain helicopters, were installed on those helicopters as part of the outboard load system. Operators of those helicopters might not be aware of the applicable overhaul or life limits for those fitting assemblies. The FAA is issuing this AD to address failure of affected aft and forward fitting assemblies and consequent loss of external cargo, resulting in personal injury or injury to persons on the ground.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0066.

**(h) Exceptions to EASA AD 2021–0066**

(1) Where EASA AD 2021–0066 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0066 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (4) of, and the service information referenced in, EASA AD 2021–0066, specify contacting Airbus Helicopters Deutschland GmbH for applicable instructions if any damage (which may be indicated by signs of corrosion, mechanical damage, loose rivets, or cracks) is found, the corrective action must be accomplished using a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters Deutschland GmbH EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(4) Where the service information referenced in EASA AD 2021–0066 specifies to discard certain parts, this AD requires removing those parts from service.

(5) This AD does not mandate compliance with the "Remarks" section of EASA AD 2021–0066.

**(i) No Reporting Requirement**

Although the service information referenced in EASA AD 2021–0066 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Special Flight Permit**

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the helicopter can be inspected (if the operator elects to do so), provided the outboard load system is not used until the applicable corrective actions required by paragraph (4) of EASA AD 2021–0066 are completed.

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

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

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

**(l) Related Information**

For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228-7323; email [Darren.Gassetto@faa.gov](mailto:Darren.Gassetto@faa.gov).

**(m) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021-0066, dated March 8, 2021.

(ii) [Reserved]

(3) For EASA AD 2021-0066, dated March 8, 2021, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find the EASA material on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0826.

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

Issued on November 10, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021-26679 Filed 12-9-21; 8:45 am]

**BILLING CODE 4910-13-P**

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

**[Docket No. FAA-2021-0606; Project Identifier 2019-SW-070-AD; Amendment 39-21832; AD 2021-24-11]**

**RIN 2120-AA64**

**Airworthiness Directives; Leonardo S.p.a. Helicopters**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Leonardo S.p.a. Model A109E, A109S, and AW109SP helicopters. This AD was prompted by reports of main landing gear (MLG) wheel assembly failure. This AD requires repetitive inspections of each affected MLG strut assembly and, depending on the findings, replacement of an affected MLG strut assembly with a serviceable assembly, or application of corrosion preventive compound, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective January 14, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 14, 2022.

**ADDRESSES:** For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find the EASA material on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0606.

**Examining the AD Docket**

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0606; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228-7323; email [Darren.Gassetto@faa.gov](mailto:Darren.Gassetto@faa.gov).

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

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019-0182, dated July 26, 2019 (EASA AD 2019-0182), to correct an unsafe condition for Leonardo S.p.a. Helicopters, formerly Finmeccanica S.p.a. Helicopter Division, AgustaWestland S.p.A., Agusta S.p.A., Model A109E, A109LUH, A109S, and AW109SP helicopters, all serial numbers. Model A109LUH helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those helicopters in the applicability. Although EASA AD 2019-0182 applies to Model A109E, A109S and AW109SP helicopters, all manufacturer serial numbers, this AD applies to helicopters with an affected assembly installed.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Leonardo S.p.a. Model A109E, A109S, and AW109SP helicopters, certificated in any category, with an affected assembly as identified in EASA AD 2019-0182. The NPRM published in the **Federal Register** on July 30, 2021 (86 FR 40964). The NPRM was prompted by reports of MLG wheel assembly failure on Model A109E helicopters. Subsequent investigations identified stress corrosion and hydrogen embrittlement on the threaded end of the MLG strut, where lack of cadmium plating was observed, and determined that a certain batch of "enhanced" MLGs may be affected. Due to design similarity Model A109S and AW109SP helicopters are also affected. The NPRM proposed to require repetitive inspections of each affected MLG strut assembly and, depending on the findings, replacement of an affected MLG strut assembly with a serviceable assembly, or application of corrosion preventive compound, as specified in EASA AD 2019-0182.

The FAA is issuing this AD to address stress corrosion and hydrogen embrittlement on the threaded end of the MLG strut in the MLG wheel assembly. This condition, if not addressed, could lead to cracks on the affected MLG assembly, resulting in damage or failure of the MLG and consequent damage to the helicopter and injury to occupants. See EASA AD 2019-0182 for additional background information.



**Discussion of Final Airworthiness Directive**

**Comments**

The FAA received a comment from one commenter. The commenter was Air Methods Corporation. The following presents the comment received on the NPRM and the FAA’s response to that comment.

**Request To Allow Part Replacement**

Air Methods Corporation requested that paragraph (h)(6) of the proposed AD be revised to include an option so an operator can replace a part or assembly that has an inspection finding of “questionable/intermediate” at the operator’s discretion, instead of having to coordinate with the manufacturer. The commenter explained that the instructions for replacing a part or assembly that has a determinate inspection finding (for example, a crack) are already in the service information referenced in EASA AD 2019–0182 and these same instructions could be used for parts that have a “questionable/intermediate” inspection finding.

The FAA partially agrees with the commenter’s request and will provide clarification regarding the requirement specified in paragraph (h)(6) of this AD. The FAA identified an error in paragraph (h)(6) of the proposed AD that could have caused an operator to misinterpret when to contact the manufacturer for corrective action if there was an inspection finding of “some burr” from the liquid penetrant inspection specified in Annex A of the

service information referenced in EASA AD 2019–0182. In the proposed AD, paragraph (h)(6) stated “Where Annex A of the service information referenced in EASA AD 2019–0182 specifies to contact the manufacturer if there is any indication of cracking due to ‘some burr’ . . . .” This language should not have included “of cracking” because any burr indication finding requires contacting the manufacturer. The FAA has revised paragraph (h)(6) of this AD to remove the words “of cracking.”

The FAA does not agree with the commenter’s request to provide an option for the removal and replacement of a part having an indication of “some burr”, or signs of arcing or burning, without contacting the manufacturer. The FAA contacted EASA, the foreign authority that has State of Design for these helicopter models, and discussed an option to permit the replacement of a potentially discrepant component without contacting the manufacturer. Based upon this discussion the FAA concluded that the affected part is still under investigation and the manufacturer needs to gather additional information from operators to determine the extent of the identified conditions and if additional corrective actions are needed. The FAA has not changed this AD regarding this issue.

**Conclusion**

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the European Union, EASA has notified the

FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

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

EASA AD 2019–0182 requires repetitive inspections of each affected MLG assembly and, depending on the findings, replacement of an affected MLG strut assembly with a serviceable assembly, or application of corrosion preventive compound. EASA AD 2019–0182 allows the installation of an affected MLG strut assembly on any helicopter, provided it is a serviceable assembly, as defined in EASA AD 2019–0182.

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

**Costs of Compliance**

The FAA estimates that this AD affects 99 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and application of corrosion protective compound.	2 work-hours × \$85 per hour = \$170 per inspection cycle.	\$17 per inspection cycle.	\$187 per inspection cycle.	\$18,513 per inspection cycle.

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

the results of the inspection. The agency has no way of determining the number

of aircraft that might need this replacement:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Replacement of damaged MLG strut assembly .....	3 work-hours × \$85 per hour = \$255 .....	\$28,100	\$28,355

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

**Authority for This Rulemaking**

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

detail the scope of the Agency’s authority.

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

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

### Regulatory Findings

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

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

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

### List of Subjects in 14 CFR Part 39

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

### The Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2021–24–11 Leonardo S.p.a.:** Amendment 39–21832 Docket No. FAA–2021–0606; Project Identifier 2019–SW–070–AD.

#### (a) Effective Date

This airworthiness directive (AD) is effective January 14, 2022.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Leonardo S.p.a. Model A109E, A109S, and AW109SP helicopters, certificated in any category, with an affected assembly as identified in European Union Aviation Safety Agency (EASA) AD 2019–

0182, dated July 26, 2019 (EASA AD 2019–0182) installed.

#### (d) Subject

Joint Aircraft Service Component (JASC) Code: 3213, Main Landing Gear Strut/Axle/Truck.

#### (e) Unsafe Condition

This AD was prompted by reports of main landing gear (MLG) wheel assembly failure. The FAA is issuing this AD to address stress corrosion and hydrogen embrittlement on the threaded end of the MLG strut in the MLG wheel assembly. This condition, if not addressed, could lead to cracks on the affected MLG assembly, resulting in damage or failure of the MLG and consequent damage to the helicopter and injury to occupants.

#### (f) Compliance

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

#### (g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0182.

#### (h) Exceptions to EASA AD 2019–0182

(1) Where EASA AD 2019–0182 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2019–0182 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2019–0182 specifies to return a certain part to the manufacturer, this AD does not include that requirement.

(4) This AD does not mandate compliance with the "Remarks" section of EASA AD 2019–0182.

(5) Where the service information referenced in EASA AD 2019–0182 specifies to discard certain parts, this AD requires removing those parts from service.

(6) Where Annex A of the service information referenced in EASA AD 2019–0182 specifies to contact the manufacturer if there is any indication due to "some burr"; and Annex B of the service information specifies to contact the manufacturer if there are signs of arcing or burning on a part; before further flight, the instructions or corrective actions (including part replacement if necessary) must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Leonardo S.p.a.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

#### (i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0182 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

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

(1) The Manager, International Validation Branch, FAA, has the authority to approve

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

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

#### (k) Related Information

For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email [Darren.Gassetto@faa.gov](mailto:Darren.Gassetto@faa.gov).

#### (l) Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0182, dated July 26, 2019.

(ii) [Reserved]

(3) For EASA AD 2019–0182, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu).

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0606.

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

Issued on November 15, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021–26681 Filed 12–9–21; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2021-0216; Project Identifier 2018-CE-061-AD; Amendment 39-21860; AD 2021-26-02]

RIN 2120-AA64

**Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Gulfstream Aerospace Corporation (Gulfstream) Model GV and GV-SP airplanes. This AD was prompted by the omission of a life limit in the airworthiness limitations section (ALS) of the maintenance manual for a certain main landing gear (MLG) trunnion pin. This AD requires revising the ALS of your existing instructions for continued airworthiness (ICA) or inspection program for the airplane to establish a life limit of 20,000 flight cycles for the affected MLG trunnion pin. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective January 14, 2022.

**ADDRESSES:** For service information identified in this final rule, contact Gulfstream Aerospace Corporation, Technical Publications Dept., 500 Gulfstream Road, Savannah, GA 31402-2206; phone: (800) 810-4853; fax: (912) 965-3520; email: [pubs@gulfstream.com](mailto:pubs@gulfstream.com); website: <https://www.gulfstream.com/en/customer-support/>. You may view this service information at the FAA, Airworthiness Products Section,

Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222-5110.

**Examining the AD Docket**

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0216; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Miral Patel, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474-5590; fax: (404) 474-5606; email: [miral.patel@faa.gov](mailto:miral.patel@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Gulfstream Aerospace Corporation (Gulfstream) Model GV and GV-SP airplanes. The NPRM published in the **Federal Register** on September 17, 2021 (86 FR 51842). The NPRM was prompted by notification from Gulfstream that a life limit for replacing MLG trunnion pin part number (P/N) 1159SCL566-15 had been omitted from the ALS of the maintenance manual for Model GV and GV-SP airplanes. Gulfstream revised the ALS for the applicable airplanes to establish a life limit of 20,000 flight cycles for the affected MLG trunnion pin. A trunnion

pin remaining in service beyond its fatigue life could lead to fracture and failure of the trunnion pin.

In the NPRM, the FAA proposed to require revising the ALS of your ICA or inspection program for the airplane to establish a life limit of 20,000 flight cycles for the affected MLG trunnion pin. The FAA is issuing this AD to prevent MLG failure, which could lead to a runway excursion.

**Discussion of Final Airworthiness Directive**

**Comments**

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

**Conclusion**

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

**Related Service Information**

The FAA reviewed Gulfstream GV Aircraft Maintenance Manual, Revision 53, dated March 15, 2021; Gulfstream G550 Aircraft Maintenance Manual, Revision 34, dated March 15, 2021; and Gulfstream G500-5000 Aircraft Maintenance Manual, Revision 34, dated March 15, 2021. For the applicable marketing designation specified on each document, the revised service information adds a life limit for MLG trunnion pin P/N 1159SCL566-15.

**Costs of Compliance**

The FAA estimates that this AD affects 516 airplanes of U.S. registry.

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

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Revise the ALS .....	1 work-hour × \$85 per hour = \$85 .....	Not applicable .....	\$85	\$43,860

**Authority for This Rulemaking**

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section

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

**Regulatory Findings**

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

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

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

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

#### The Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

#### 2021–26–02 Gulfstream Aerospace

**Corporation:** Amendment 39–21860; Docket No. FAA–2021–0216; Project Identifier 2018–CE–061–AD.

#### (a) Effective Date

This airworthiness directive (AD) is effective January 14, 2022.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model GV and GV–SP airplanes, all serial numbers, certificated in any category.

**Note 1 to paragraph (c):** Model GV–SP airplanes are also referred to by the marketing designations G500, G550, and G500–5000.

#### (d) Subject

Joint Aircraft System Component (JASC) Code 3200, Landing Gear System.

#### (e) Unsafe Condition

This AD was prompted by the omission of a life limit in the airworthiness limitations section (ALS) for a certain main landing gear (MLG) trunnion pin. The FAA is issuing this AD to prevent a MLG trunnion pin from remaining in service beyond its fatigue life. This unsafe condition, if not addressed, could result in MLG failure and could lead to a runway excursion.

#### (f) Compliance

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

#### (g) Revise the ALS

Within 12 months after the effective date of this AD, revise the existing ALS of the instructions for continued airworthiness or aircraft inspection program for your airplane by establishing a life limit of 20,000 flight cycles for each MLG trunnion pin part number 1159SCL566–15.

**Note 2 to paragraph (g):** Table 5 in Section 05–10–10 of the following aircraft maintenance manuals contains the life limit in paragraph (g) of this AD: Gulfstream GV Aircraft Maintenance Manual, Revision 53, dated March 15, 2021; Gulfstream G550 Aircraft Maintenance Manual, Revision 34, dated March 15, 2021; or Gulfstream G500–5000 Aircraft Maintenance Manual, Revision 34, dated March 15, 2021.

#### (h) 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 (i)(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.

#### (i) Related Information

(1) For more information about this AD, contact Miral Patel, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5590; fax: (404) 474–5606; email: [miral.patel@faa.gov](mailto:miral.patel@faa.gov).

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., 500 Gulfstream Road, Savannah, GA 31402–2206; phone: (800) 810–4853; fax: (912) 965–3520; email: [pubs@gulfstream.com](mailto:pubs@gulfstream.com); website: <https://www.gulfstream.com/en/customer-support/>. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

#### (j) Material Incorporated by Reference

None.

Issued on December 6, 2021.

#### Lance T. Gant,

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

[FR Doc. 2021–26786 Filed 12–9–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2021–0740; Airspace Docket No. 21–ASW–15]

RIN 2120–AA66

### Amendment of Class E Airspace and Establishment of Class E; Greenville and Terrell, TX

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

**ACTION:** Final rule.

**SUMMARY:** This action amends the Class E airspace at Greenville, TX, and establishes Class E airspace at Terrell, TX. This action is the result of airspace reviews due to the decommissioning of the Caddo Mills non-directional beacon (NDB). The geographic coordinates of Caddo Mills Municipal Airport, Caddo Mill, TX, are also being updated to coincide with the FAA’s aeronautical database.

**DATES:** Effective 0901 UTC, March 24, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

**ADDRESSES:** 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/](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. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: [fr.inspection@nara.gov](mailto: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 amends the Class E airspace extending upward from 700 feet above the surface at Caddo Mills Municipal Airport, Caddo Mills, TX, contained within the Greenville, TX, airspace legal description, and establishes Class E airspace extending upward from 700 feet above the surface at Terrell Municipal Airport, Terrell, TX, to support instrument flight rule operations at these airports.

#### History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 50862; September 13, 2021) for Docket No. FAA-2021-0740 to amend the Class E airspace at Greenville, TX, and establish Class E airspace at Terrell, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 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 FAA Order JO 7400.11.

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

This document amends FAA Order 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 Rule

This amendment to 14 CFR part 71: Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 6.5-mile) radius of Caddo Mills Municipal Airport, Caddo Mills, TX, contained within the Greenville, TX, airspace legal description; removes the Caddo Mills

RBN and associated extension from the Greenville, TX, airspace legal description; removes Terrell Municipal Airport and the associate airspace from the Greenville, TX, airspace legal description as the airspace no longer adjoins and separate airspace is being established for Terrell, TX; removes the city associated with Majors Airport, Greenville, TX, to comply with updates to FAA Order 7400.2N, Procedures for Handling Airspace Matters; updates the geographic coordinates of the Caddo Mills Municipal Airport to coincide with the FAA's aeronautical database; and removes the exclusionary language as it is no longer required;

And establishes Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Terrell Municipal Airport, Terrell, TX.

These actions are the result of airspace reviews caused by the decommissioning of the Caddo Mills NDB which provided guidance to instrument procedures at these airports.

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

#### Environmental Review

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

#### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

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

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

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

#### 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, 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 Greenville, TX [Amended]

Majors Airport, TX  
(Lat. 33°04'04" N, long. 96°03'55" W)  
Caddo Mills Municipal Airport, TX  
(Lat. 33°02'10" N, long. 96°14'35" W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Majors Airport; and within a 6.4-mile radius of the Caddo Mills Municipal Airport.

\* \* \* \* \*

#### ASW TX E5 Terrell, TX [Established]

Terrell Municipal Airport, TX  
(Lat. 32°42'31" N, long. 96°16'02" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Terrell Municipal Airport.

Issued in Fort Worth, Texas, on December 6, 2021.

**Steven T. Phillips,**

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

[FR Doc. 2021-26649 Filed 12-9-21; 8:45 am]

**BILLING CODE 4910-13-P**

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

[Docket No. FAA–2021–1046; Airspace  
Docket No. 21–ASO–35]

RIN 2120–AA66

**Amendment of Class E Airspace;  
Ashland, KY**

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

**ACTION:** Final rule.

**SUMMARY:** This action amends the Class E airspace extending upward from 700 feet above the surface at Ashland Regional Airport, Ashland, KY, by updating the geographic coordinates of the airport in the airspace legal description to coincide with the FAA’s aeronautical database. This action does not change the airspace boundaries or operating requirements.

**DATES:** Effective 0901 UTC, March 24, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

**ADDRESSES:** 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/](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. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: [fr.inspection@nara.gov](mailto: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 amends the Class E airspace extending upward from 700 feet above the surface at Ashland Regional Airport, Ashland, KY, by updating the geographic coordinates of the airport in the airspace legal description to coincide with the FAA’s aeronautical database.

**History**

Class E airspace areas extending upward from 700 feet AGL above the surface are used to transition to/from the terminal or enroute environment. During a recent review of the Ashland Regional Airport, Ashland, KY, airspace, the FAA identified that the geographic coordinates of the airport were incorrect. This action updates the geographic coordinates of the airport to coincide with the FAA’s aeronautical database. This action does not change the airspace boundaries or operating requirements.

Class E airspace designations are published in paragraph 6005 of FAA Order 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 FAA Order JO 7400.11.

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

This document amends FAA Order 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 Rule**

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface at Ashland Regional Airport, Ashland, KY, by updating the geographic coordinates of the airport to coincide with the FAA’s aeronautical database.

This action is an administrative change and does not affect the airspace boundaries or operating requirements; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

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

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, 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.*

\* \* \* \* \*

**ASO KY E5 Ashland, KY [Amended]**

Ashland Regional Airport, KY  
(Lat. 38°33'16" N, long. 82°44'16" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ashland Regional Airport, and extending 2 miles either side of the 098° bearing from the airport extending from the 6.5-mile radius to 10.4 miles east of the airport, and extending 2 miles either side of the 278° bearing from the airport extending from the 6.5-mile radius to 10.5 miles west of the airport.

Issued in Fort Worth, Texas, on December 7, 2021.

**Steven T. Phillips,**

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

[FR Doc. 2021-26785 Filed 12-9-21; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 876**

[Docket No. FDA-2021-N-0585]

**Medical Devices; Gastroenterology-Urology Devices; Classification of the Ingested, Transient, Space Occupying Device for Weight Management and/or Weight Loss**

**AGENCY:** Food and Drug Administration, Department of Health and Human Services (HHS).

**ACTION:** Final amendment; final order.

**SUMMARY:** The Food and Drug Administration (FDA or we) is classifying the ingested, transient, space occupying device for weight management and/or weight loss into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the ingested, transient, space occupying device for weight management and/or weight loss's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

**DATES:** This order is effective December 10, 2021. The classification was applicable on April 12, 2019.

**FOR FURTHER INFORMATION CONTACT:** April Marrone, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G218, Silver Spring, MD 20993-0002, 240-402-6510, *April.Marrone@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Upon request, FDA has classified the ingested, transient, space occupying device for weight management and/or weight loss as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through "De Novo" classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105-115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure

(Pub. L. 112-144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining "substantial equivalence"). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

**II. De Novo Classification**

On November 15, 2018, Gelesis, Inc. submitted a request for De Novo classification of the ingested, transient, space occupying device for weight management and/or weight loss. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the

establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 12, 2019, FDA issued an order to the requester classifying the device into class II. In

this final order, FDA is codifying the classification of the device by adding 21 CFR 876.5982.<sup>1</sup> We have named the generic type of device ingested, transient, space occupying device for weight management and/or weight loss, and it is identified as an ingested material that transiently occupies space

in the stomach. The device passes from the body via the natural gastrointestinal tract.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—INGESTED, TRANSIENT, SPACE OCCUPYING DEVICE FOR WEIGHT MANAGEMENT AND/OR WEIGHT LOSS RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Device related gastrointestinal adverse events, including: <ul style="list-style-type: none"> <li>• Obstruction</li> <li>• Dilation</li> <li>• Diarrhea</li> <li>• Constipation</li> <li>• Dehydration</li> </ul>	Clinical performance testing, Non-clinical performance testing, Labeling, and Shelf life testing.
Weight gain .....	Clinical performance testing, and Labeling.
Interaction with medication .....	Clinical performance testing, Non-clinical performance testing, and Labeling.
Adverse tissue reaction .....	Biocompatibility evaluation.
Infection .....	Non-clinical performance testing, and Shelf life testing.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k).

At the time of classification, ingested, transient, space occupying devices for weight management and/or weight loss are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

**III. Analysis of Environmental Impact**

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

<sup>1</sup> FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

**IV. Paperwork Reduction Act of 1995**

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the guidance document “De Novo Classification Process (Evaluation of Automatic Class III Designation)” have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801 regarding labeling, have been approved under OMB control number 0910–0485.

**List of Subjects in 21 CFR Part 876**

Medical devices.

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register’s (OFR) interpretations of the Federal Register Act (44

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

**PART 876—GASTROENTEROLOGY-UROLOGY DEVICES**

■ 1. The authority citation for part 876 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 876.5982 to subpart F to read as follows:

**§ 876.5982 Ingested, transient, space occupying device for weight management and/or weight loss.**

(a) *Identification.* This device is an ingested material that transiently occupies space in the stomach. The device passes from the body via the natural gastrointestinal tract.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The patient-contacting components of the device must be demonstrated to be biocompatible for its intended use.

(2) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions for use, as follows:

(i) Performance bench testing in a simulated use model must evaluate device disintegration and device

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.



hydration state throughout the gastrointestinal tract;

(ii) Bioburden and moisture content assessments must evaluate device infection risk throughout the labeled shelf life; and

(iii) Performance data must support the shelf life of the device by demonstrating continued package integrity and device functionality over the labeled shelf life.

(3) Clinical performance testing must demonstrate the device performs as intended and evaluate the following:

(i) Weight change;

(ii) All adverse events, including obstruction, dilation, diarrhea, constipation, and dehydration; and

(iii) Interaction with representative medications.

(4) Physician and patient device labeling must state:

(i) The clinical benefit of the device as assessed by using percent total body weight loss;

(ii) Treatment must be offered in combination with diet and exercise;

(iii) Instructions on how to use the device as intended including how to avoid interaction with medication; and

(iv) The shelf life of the device.

Dated: December 6, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021-26738 Filed 12-9-21; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 878

[Docket No. FDA-2021-N-0572]

#### Medical Devices; General and Plastic Surgery Devices; Classification of the Negative Pressure Wound Therapy Device for Reduction of Wound Complications

**AGENCY:** Food and Drug Administration, Department of Health and Human Services (HHS).

**ACTION:** Final amendment; final order.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is classifying the negative pressure wound therapy device for reduction of wound complications into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the negative pressure wound therapy device for reduction of wound complications'

classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

**DATES:** This order is effective December 10, 2021. The classification was applicable on April 19, 2019.

#### FOR FURTHER INFORMATION CONTACT:

Cynthia Chang, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4646, Silver Spring, MD 20993-0002, 301-796-6891, [Cynthia.Chang@fda.hhs.gov](mailto:Cynthia.Chang@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Upon request, FDA has classified the negative pressure wound therapy device for reduction of wound complications as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act to a predicate device that does not require premarket approval (see 21 U.S.C. 360c(i)). We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through "De Novo" classification, a common name for the process authorized under section 513(f)(2) of the

FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105-115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112-144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining "substantial equivalence"). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

##### II. De Novo Classification

On March 15, 2018, KCI USA, Inc. submitted a request for De Novo classification of the PREVENA 125 and PREVENA PLUS 125 Therapy Units. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls,

provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 19, 2019, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 878.4783.<sup>1</sup> We have named the generic type of device negative pressure wound therapy device for reduction of wound complications, and it is identified as a powered suction pump intended for wound management and reduction of wound complications via application of negative pressure to the

wound, which removes fluids, including wound exudate, irrigation fluids, and infectious materials. This device type is intended for use with wound dressings classified under 21 CFR 878.4780. This classification does not include devices intended for organ space wounds.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—NEGATIVE PRESSURE WOUND THERAPY DEVICE FOR REDUCTION OF WOUND COMPLICATIONS RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Adverse tissue reaction .....	Biocompatibility evaluation.
Infection .....	Sterilization validation, Shelf life testing, and Labeling.
Electrical shock or electromagnetic interference with other devices .....	Electromagnetic compatibility testing, Electrical safety testing, and Labeling.
Damage to underlying tissue (e.g., wound maceration, uncontrolled bleeding) due to:	Clinical data; Non-clinical performance testing; Usability testing; Shelf life testing; Software verification, validation, and hazard analysis; and Labeling.
• Mechanical failure	
• Software malfunction	
• Use error	
Increase in wound complications due to use error .....	Clinical data, Usability testing, and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, negative pressure wound therapy devices for reduction of wound complications are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

**III. Analysis of Environmental Impact**

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

**IV. Paperwork Reduction Act of 1995**

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the guidance document “De Novo Classification Process (Evaluation of Automatic Class III Designation)” have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801, regarding labeling, have been

approved under OMB control number 0910–0485.

**List of Subjects in 21 CFR Part 878**

Medical devices.  
Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

**PART 878—GENERAL AND PLASTIC SURGERY DEVICES**

■ 1. The authority citation for part 878 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 878.4783 to subpart E to read as follows:

**§ 878.4783 Negative pressure wound therapy device for reduction of wound complications.**

(a) *Identification.* A negative pressure wound therapy device for reduction of wound complications is a powered suction pump intended for wound management and reduction of wound complications via application of negative pressure to the wound, which removes fluids, including wound exudate, irrigation fluids, and infectious materials. This device type is intended

<sup>1</sup> FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of the Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

for use with wound dressings classified under § 878.4780. This classification does not include devices intended for organ space wounds.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical data must demonstrate that the device performs as intended under anticipated conditions of use and evaluate the following:

- (i) Wound complication rates; and
- (ii) All adverse events.

(2) The patient-contacting components of the device must be demonstrated to be biocompatible.

(3) Performance data must demonstrate the sterility of the patient-contacting components of the device.

(4) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the labeled shelf life.

(5) Usability testing must demonstrate that intended users can correctly use the device, based solely on reading the instructions for use.

(6) Non-clinical performance data must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested in a worst-case scenario for the intended use life:

(i) Ability to maintain pressure levels at the wound site under a worst-case scenario for the intended use life;

(ii) Fluid removal rate consistent with the wound types specified in the indications for use; and

- (iii) Timely triggering of all alarms.

(7) Performance data must demonstrate the electrical safety and electromagnetic compatibility (EMC) of the device.

(8) Software verification, validation, and hazard analysis must be performed.

(9) Labeling must include the following:

- (i) Instructions for use;

(ii) A summary of the device technical specifications, including pressure settings, modes (*e.g.*, continuous or intermittent), alarms, and safety features;

(iii) Compatible components and devices;

(iv) A summary of the clinical evidence for the indications for use;

(v) A shelf life for sterile components; and

(vi) Use life and intended use environments.

(10) For devices intended for use outside of a healthcare facility, patient labeling must include the following:

(i) Information on how to operate the device and its components and the typical course of treatment;

(ii) Information on when to contact a healthcare professional; and

(iii) Use life.

Dated: December 6, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021–26741 Filed 12–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 882

[Docket No. FDA–2021–N–0595]

#### Medical Devices; Neurological Devices; Classification of the Transcutaneous Electrical Nerve Stimulator for Attention Deficit Hyperactivity Disorder

**AGENCY:** Food and Drug Administration, Department of Health and Human Services (HHS).

**ACTION:** Final amendment; final order.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is classifying the transcutaneous electrical nerve stimulator for attention deficit hyperactivity disorder (ADHD) into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the transcutaneous electrical nerve stimulator for ADHD's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

**DATES:** This order is effective December 10, 2021. The classification was applicable on April 19, 2019.

**FOR FURTHER INFORMATION CONTACT:** Pamela Scott, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4208, Silver Spring, MD 20993–0002, 301–796–5433, [PamelaD.Scott@fda.hhs.gov](mailto:PamelaD.Scott@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Upon request, FDA has classified the transcutaneous electrical nerve stimulator for ADHD as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance

patients' access to beneficial innovation, by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining “substantial equivalence”). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

**II. De Novo Classification**

On July 30, 2018, NeuroSigma, Inc. submitted a request for De Novo classification of the Monarch eTNS System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA

has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 19, 2019, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 882.5898.<sup>1</sup> We have named the generic type of device transcutaneous electrical nerve stimulator for ADHD, and it is identified as a prescription device that stimulates transcutaneously or percutaneously through electrodes placed on the forehead.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—TRANSCUTANEOUS ELECTRICAL NERVE STIMULATOR FOR ADHD RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Adverse tissue reaction .....	Biocompatibility evaluation.
Injury or discomfort from electrical stimulation, including burns and nerve damage.	Electromagnetic compatibility testing; Electrical, mechanical, and thermal safety testing; Non-clinical performance testing; Software verification, validation, and hazard analysis; Shelf life testing; and Labeling.
Misuse that may result in device failure, user discomfort, or injury.	Labeling.
Skin irritation or infection from use on broken skin .....	Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, transcutaneous electrical nerve stimulators for ADHD are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

**III. Analysis of Environmental Impact**

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**IV. Paperwork Reduction Act of 1995**

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the guidance document “De Novo Classification Process (Evaluation of Automatic Class III Designation)” have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814,

subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

**List of Subjects in 21 CFR Part 882**

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

<sup>1</sup> FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

**PART 882—NEUROLOGICAL DEVICES**

■ 1. The authority citation for part 882 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 882.5898 to subpart F to read as follows:

**§ 882.5898 Transcutaneous electrical nerve stimulator for attention deficit hyperactivity disorder.**

(a) *Identification.* A transcutaneous electrical nerve stimulator for attention deficit hyperactivity disorder (ADHD) is a prescription device that stimulates transcutaneously or percutaneously through electrodes placed on the forehead.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The patient-contacting components of the device must be demonstrated to be biocompatible.

(2) Performance testing must demonstrate the electromagnetic compatibility and electrical, mechanical, and thermal safety of the device.

(3) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following must be performed:

(i) Electrical performance testing must validate electrical output and duration of stimulation;

(ii) Battery performance testing must be performed; and

(iii) Adhesive integrity testing of the electrodes must be conducted.

(4) The technical parameters of the device including waveform, maximum output current and voltage, pulse duration, frequency, net charge per pulse, maximum current density, maximum average current, and maximum average power density must be fully characterized.

(5) Software verification, validation, and hazard analysis must be performed.

(6) Shelf life testing of the electrodes must be performed to demonstrate continued package integrity and component functionality over the labeled shelf life.

(7) Labeling must include the following:

(i) A contraindication for patients with an implanted metallic or electronic device in the head, a cardiac pacemaker, or an implanted or wearable defibrillator;

(ii) A warning that the device is only for use on clean, intact skin;

(iii) Information on how the device operates and the typical sensations experienced during treatment;

(iv) A detailed summary of the device technical parameters;

(v) A shelf life for the electrodes;

(vi) Instructions for use, including placement of the device on the patient; and

(vii) Cleaning instructions.

Dated: December 6, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021–26740 Filed 12–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG–2021–0866]

**Safety Zone; Sacramento New Year's Eve Fireworks, Sacramento River, Sacramento, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the three safety zones in the navigable waters of the Sacramento River near River Walk Park and the Tower Bridge in Sacramento, CA in support of the Sacramento New Year's Eve Fireworks in the Captain of the Port, San Francisco area of responsibility on December 31, 2021. This action is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. During the enforcement periods noted below, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM) or other federal, state, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

**DATES:** The regulation in 33 CFR 165.1191, will be enforced for the location in Table 1 to § 165.1191, Item number 25, from 8:30 p.m. until 9:45 p.m. on December 31, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email Lieutenant Anthony Solares, Waterways Management, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zones established in 33 CFR 165.1191 Table 1,

Item number 25, for the Sacramento New Year's Eve Fireworks Display from 8:30 p.m. until 9:45 p.m. on December 31, 2021, or as announcement via Broadcast Notice to Mariners. The safety zone will extend to all three safety zones established in 33 CFR 165.1191 Table 1, Item number 25. During the period of enforcement, the three safety zones for the Sacramento New Year's Eve Fireworks Display will encompass the navigable waters, from surface to bottom, around the fireworks firing sites within three respective circles each with a radius of 700 feet with the respective circle centers in approximate positions:

Southern Firing Site at 38°34'50.00" N 121°30'29.20" W,

Northern Firing Site at 38°35'02.07" N 121°30'39.73" W, and

Near the Tower Bridge at 34°34'49.43" N 121°30'29.19" W (NAD83).

The safety zones will be enforced from 8:30 p.m. until 9:45 p.m. on December 31, 2021, or as announced via Broadcast Notice to Mariners.

In addition to this notification in the **Federal Register**, the Coast Guard plans to provide notification of the safety zone and its enforcement period via the Local Notice to Mariners.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM or other Official Patrol defined as a federal, state, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. Additionally, each person who receives notice of a lawful order or direction issued by the PATCOM or Official Patrol shall obey the order or direction. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: December 6, 2021.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco.*

[FR Doc. 2021–26792 Filed 12–9–21; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket Number USCG–2021–0865]

RIN 1625–AA00

**Safety Zone; Frantic Inc Chase Center Fireworks, San Francisco Bay, San Francisco, CA****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Francisco Bay near Chase Center in San Francisco, CA in support of a fireworks display on December 19, 2021. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or a designated representative.

**DATES:** This rule is effective from 11 a.m. until 10:40 p.m. on December 19, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2021–0865 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Anthony I. Solares, U.S. Coast Guard District 11, Sector San Francisco, at 415–399–3585, [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:****I. Table of Abbreviations**

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

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule

without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until November 10, 2021. It is impracticable to go through the full notice and comment rule making process because the Coast Guard must establish this safety zone by December 19, 2021 and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the fireworks display near Chase Center in the San Francisco Bay on December 19, 2021.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the Frantic Inc Chase Center Fireworks on December 19, 2021, will be a safety concern for anyone within a 100-foot radius of the fireworks vessel during loading and staging, and anyone within a 700-foot radius of the fireworks vessel starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around the fireworks vessel and during the fireworks display.

**IV. Discussion of the Rule**

This rule establishes a temporary safety zone from 11 a.m. until 10:40 p.m. on December 19, 2021, during the loading, staging, and transit of the fireworks vessel in San Francisco Bay from Pier 50 to 1000 feet off Chase Center, San Francisco, CA, and until 30 minutes after completion of the fireworks display. During the loading, staging, and transit of the fireworks vessel scheduled to take place between

11 a.m. and 9:15 p.m. on December 19, 2021, until 30 minutes prior to the start of the fireworks display, the safety zone will encompass the navigable waters around and under the fireworks vessel, from surface to bottom, within a circle formed by connection of all points 100 feet out from the fireworks vessel. The fireworks display is scheduled to start at 10:00 p.m. December 19, 2021 and end at approximately 10:10 p.m. on December 19, 2021, 1,000 feet from Chase Center in San Francisco, CA.

The fireworks vessel will remain at Pier 50 until the start of its transit to the display location. Movement of the vessel from Pier 50 to the display location is scheduled to take place from 8:45 p.m. to 9:15 p.m. on December 19, 2021, where it will remain until the conclusion of the fireworks display.

At 9:30 p.m. on December 19, 2021, 30 minutes prior to the commencement of the 10-minute fireworks display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks vessel, from surface to bottom, within a circle formed by all connecting points 700 feet from the circle center at approximate position 37°46′02.82″ N, 122°22′56.00″ W (NAD 83), or as announced via Broadcast Notice to Mariners. The safety zone will terminate at 10:40 p.m. on December 19, 2021.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the fireworks loading, staging, transit, and display site. Except for persons or vessels authorized by the COTP or the COTP’s designated representative, no person or vessel may enter or remain in the restricted area. A “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone. This regulation is necessary to ensure the safety of participants, spectators, and transiting vessels.

**V. Regulatory Analyses**

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

**A. Regulatory Planning and Review**

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

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterways users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP’s designated representative.

#### B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

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

#### D. Federalism and Indian Tribal Governments

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

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

#### E. Unfunded Mandates Reform Act

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

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters around the loading, staging, transit, and display of fireworks near Pier 50 and 1,000 feet off Chase Center in San Francisco Bay. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### G. Protest Activities

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

#### List of Subjects in 33 CFR Part 165

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

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

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

- 2. Add § 165.T11–080 to read as follows:

#### § 165.T11–080 Safety Zone; Frantic Inc Chase Center Fireworks, San Francisco Bay, San Francisco, CA.

(a) *Location.* This safety zone encompasses all navigable waters of San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks vessel during loading and staging at Pier 50 in San Francisco, as well as transit and arrival 1,000 feet off of Chase Center, San Francisco, CA. Between 9:30 p.m. on December 19, 2021 and 10:40 p.m. on December 19, 2021, the safety zone will expand to all navigable waters, from surface to bottom, within a circle formed by connection all points 700 feet out from the fireworks vessel in approximate position 37°46′02.82″ N,

122°22'56.00" W (NAD 83) or as announced via Broadcast Notice to Mariners.

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

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

(d) *Enforcement period.* This section will be enforced from 11 a.m. until 10:40 p.m. on December 19, 2021.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with 33 CFR 165.7.

Dated: December 6, 2021.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco.*

[FR Doc. 2021-26791 Filed 12-9-21; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2021-0864]

#### **Safety Zone; Sausalito Lighted Boat Parade Fireworks Display; Richardson Bay, Sausalito, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone in the navigable waters of Richardson Bay, off Sausalito, CA, in support of the Sausalito Lighted Boat Parade Fireworks Display. This safety zone is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone, unless authorized by the designated Patrol Commander (PATCOM) or other federal, state, or local agencies on scene to assist the Coast Guard in enforcing the regulated area.

**DATES:** The regulation in 33 CFR 165.1191, will be enforced for the location in Table 1 to § 165.1191, Item number 30, from 10 a.m. until 8:25 p.m. on December 11, 2021, or as announced via Broadcast Notice to Mariners.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email LT Anthony Solares, Sector San Francisco Waterways Management, U.S. Coast Guard; telephone 415-399-3585, email [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone established in 33 CFR 165.1191, Table 1, Item number 30, for the Sausalito Lighted Boat Parade Fireworks on December 11, 2021. The Captain of the Port has delegated the authority to issue the notification of enforcement for this regulation to the Prevention Department Head. The Coast Guard will enforce a 100-foot safety zone around the fireworks barge during the loading, transit, and setup of the fireworks barge from the loading location to the display location and until the commencement of the fireworks display. From 10 a.m. until 5 p.m. on December 11, 2021, the fireworks barge will be loading pyrotechnics at Pier 50 in San Francisco, CA. The fireworks barge will remain at the loading location until its transit to the display location. From 5:30 p.m. to 7:00 p.m. on December 11, 2021 the loaded fireworks barge will transit from Pier 50 to the launch site near Sausalito Point in approximate position 37°51'15.99" N, 122°28'41.70" W (NAD 83), where it will remain until the conclusion of the fireworks display. Starting at 7:15 p.m. on December 11, 2021, 30 minutes prior to the commencement of the 10-minute fireworks display, the safety zone will encompass the navigable waters, from

surface to bottom, surrounding the fireworks barge near Spinnaker Point in Sausalito, CA within a radius of 1,000 feet from approximate position 37°51'15.99" N, 122°28'41.70" W (NAD 83) for the Sausalito Lighted Boat Parade Fireworks Display as set forth in 33 CFR 165.1191, Table 1, Item number 30. The safety zone will be enforced until 8:25 p.m. on December 11, 2021, or as announced via Broadcast Notice to Mariners.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM or other Official Patrol defined as a federal, state, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. Additionally, each person who receives notice of a lawful order or direction issued by the PATCOM or Official Patrol shall obey the order or direction. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: December 6, 2021.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco.*

[FR Doc. 2021-26790 Filed 12-9-21; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2021-0862]

RIN 1625-AA00

#### **Safety Zone; Pensacola Bay, Pensacola Beach, FL**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for



all navigable waters within 100 yards from the pilings, work equipment, and structures of the Pensacola Bay Bridge, Pensacola Beach, FL, including the channel at the center span. This temporary safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by repair work on the bridge. Entry of vessels or persons into this zone is prohibited unless specifically authorized the Captain of the Port Sector Mobile (COTP) or a designated representative.

**DATES:** This rule is effective without actual notice from December 10, 2021, until December 31, 2021. For purposes of enforcement, actual notice will be used from December 3, 2021, until December 10, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2021–0862 in the search box and click “search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Andrew S. Anderson, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251–441–5940, email [Andrew.S.Anderson@uscg.mil](mailto:Andrew.S.Anderson@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. It is impracticable to publish an NPRM because we must establish this safety zone by December 3, 2021, and lack sufficient time to provide a

reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule is contrary to public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with this project. Immediate action is needed to protect vessels and mariners from the safety hazards associated with the bridge construction project on the waterway.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Mobile (COTP) has determined that potential hazards associated with the bridge construction project on December 3rd will be a safety concern for any vessels or persons within 100 yards from the pilings, work equipment, and structures of the Pensacola Bay Bridge, Pensacola Beach, FL, including the channel at the center span which will be impassable at the time. This rule is needed to protect the public, mariners, and vessels from the potential hazards associated with the bridge construction project on the waterway.

##### IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone, effective for 24 hours a day, starting at 6 a.m. on December 3rd through 6 a.m. December 31, 2021. The safety zone encompasses the navigable waters within 100 yards from the pilings, work equipment, and structures of the Pensacola Bay Bridge, Pensacola Beach, FL, including the channel at the center span which will be impassable at the time. The location and duration of this safety zone is intended to protect persons and vessels during the bridge construction project that will take place on this navigable waterway. No person or vessel will be permitted to enter or transit within the safety zone, unless specifically authorized by the COTP or a designated representative. Public notifications will be made to the local maritime community through Broadcast Notice to Mariners (BNM). Mariners and other members of the public may also contact the COTP or designated representative to inquire about the safety zone by telephone at 251–441–5490.

##### V. Regulatory Analyses

We developed this rule after considering numerous statutes and

Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protectors.

##### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). This regulatory determination is based on the size, location, and duration, of the safety zone. This temporary safety zone will only restrict navigation within 100 yards from the pilings, work equipment and structures of the Pensacola Bay Bridge, Pensacola Beach, FL, for duration of the bridge construction. Moreover, the rule would allow vessels to seek permission to enter the zone.

##### B. Impact Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to

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

### C. Collection of Information

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

### D. Federalism and Indian Tribal Governments

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

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

### E. Unfunded Mandates Reform Act

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

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1., associated implementing instructions, and Environmental Planning COMDTINST

5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit mariners and the public 100 yards from the pilings, work equipment and structures of the Pensacola Bay Bridge, Pensacola Beach, FL, including the channel at the center span that will be impassable at this time. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev.01.

### G. Protest Activities

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

### List of Subjects 33 CFR Part 165

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

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

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

- 2. Add § 165.T08-0862 to read as follows:

#### § 165.T08-0862 Safety Zone; Pensacola Bay Bridge, Pensacola Beach, FL.

(a) *Location.* The following area is a safety zone: All navigable waters within 100 yards from the pilings, work equipment, and structures of the Pensacola Bay Bridge, Pensacola Beach, FL, including the channel at the center span which will be impassable at the time.

(b) *Enforcement period.* This section is effective without actual notice from December 10, 2021, until December 31, 2021. For purposes of enforcement, actual notice will be used from

December 3, 2021, until December 10, 2021.

(c) *Regulations.* (1) The general regulations contained in § 165.23 as well as the regulations in this section apply to the regulated area.

(2) Entry into this zone is prohibited unless authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

(3) Persons or vessels seeking to enter into or transit through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM channels 15 and 16 or by telephone at 251-441-5976.

(4) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone.

Dated: December 3, 2021.

**L.A. Allen,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Mobile.*

[FR Doc. 2021-26755 Filed 12-9-21; 8:45 am]

**BILLING CODE 9110-04-P**

## POSTAL SERVICE

### 39 CFR Part 111

#### Periodicals Pending Authorization Postage

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) subsection 207.5.2 to revise the process for calculating postage on a Periodicals publication pending authorization.

**DATES:** *Effective Date:* January 9, 2022.

**FOR FURTHER INFORMATION CONTACT:** Elke Reuning-Elliott at (202) 268-4063 or Garry Rodriguez at (202) 268-7281.

**SUPPLEMENTARY INFORMATION:** On September 30, 2021, the Postal Service published a notice of proposed rulemaking (NPRM) (86 FR 54142) to revise the postage calculation standards for Periodicals pending authorization. In response to the proposed rule, four commenters submitted comments.

*Comment:* One commenter supported the proposal changes, stating that it would make pricing Pending periodicals more efficient and effective.

*USPS Response:* The Postal Service is grateful for the support.

*Comment:* One commenter opposed the proposal, characterizing it as a price increase unsupported by data, analysis, or fiscal studies that would assess its effects.

*USPS Response:* The Postal Service believes this comment misunderstands the proposal. The Postal Service was not proposing a price increase, which in any event would have to be brought as a price case before the Postal Regulatory Commission, not a change to the Domestic Mail Manual. Rather, the Postal Service proposed an alternative method of assigning non-Periodicals prices to mailings while a mailer's application for Periodicals mailing privileges is pending.

Mailers seeking Periodicals mailing privileges must submit an application for approval, together with appropriate fees and supporting information to demonstrate eligibility (DMM 207.4.1–207.4.2; 207.4.13; 207.5.1.1–207.5.1.10; 207.10.7.1–207.10.7.3). While this application is pending, a mailer may prepare its mailing as Periodicals and make use of all available dropshipping and pre-sorting options available for Periodicals, but the mailing is not eligible for Periodicals prices.

As such, the mailer must provide two postage statements with each mailing, a Periodicals postage statement and a postage statement for the non-Periodicals price most closely applicable to the mailing (DMM 207.17.2.5). The process is automated, however, and a mailer that has an account with the Postal Service need

only enter a Periodicals postage statement into the Postal Service computer systems, which then automatically generate the non-Periodicals postage statement and calculate the closest applicable non-Periodicals prices. It is the methodology its computer systems use to assign non-Periodicals prices that the Postal Service proposed to revise because the current methodology is unwieldy and limited.

On the one hand, maintaining the underlying mapping between Periodicals and non-Periodicals prices is labor intensive. There are hundreds of possible rate cells to map between Periodicals prices and possible non-Periodicals prices. The price for out-of-county Periodicals, for example, includes a per-pound price for the percentage of advertising space; a per-pound price for the percentage of non-advertising space; a per-piece price that varies by shape (*i.e.*, letters, flats, or parcels), sorting level (*e.g.*, CR, 5-Digit, 3-Digit, ADC, etc.), and machinability; and a per-bundle or per container price, the latter of which varies by dropship level (Notice 123, August 29, 2021).

On the other hand, and more importantly, the current methodology does not provide exact pricing. In some cases, for example, a mailing might receive a non-Periodical rate that most closely matches by size, weight, and shape but for which the mailing nevertheless does not qualify because it does not meet volume requirements. The minimum volume requirement for a

mailing pre-sorted to ADC, 3-Digit, or 5-Digit, for example, is 6 pieces for Periodicals and 10 pieces for Marketing Mail, the most closely analogous price. Pending Periodicals mailings between 6 and 9 pieces receive the Marketing Mail price even though those mailings do not qualify for that price.

In other cases, an equivalent appropriate rate simply may not exist. For example, an out-of-county Periodical mailing will pay one price, an identical in-county Periodical mailing will pay a different and lower price, *id.*, but no other mail product makes an equivalent in-county/outside-county pricing distinction. Thus, the most closely applicable price to charge pending in-county Periodicals as opposed to pending outside-county Periodicals is unclear.

Accordingly, in the September 30 NPRM, the Postal Service proposed a simplified way to charge current non-Periodical rates for Periodicals mailings while a mailer's application for Periodicals privileges is pending. Mailers pay non-Periodical rates based upon commonalities of size, shape, and weight between the Periodicals mailed and other products. Table 1, an expanded version of DMM Exhibit 5.2.3, sets out possible Periodical types, corresponding non-Periodicals products, the reason for the association, the relevant average per-piece prices, and the non-Periodicals price to be paid, expressed as a percentage to be added to the Periodicals prices.

TABLE 1—PENDING PERIODICALS AND ASSOCIATED RATES

Periodical	Associated class/subclass	Reason for associated class/subclass	Average price for associated class/subclass	Average periodicals price <sup>1</sup>	% Difference
Periodicals Flats	Marketing Mail Flats <sup>2</sup>	Meets Flat Dimension Requirement up to 15.99 ozs.	\$0.542	\$0.333	63
Periodicals Letters	Marketing Mail Letters <sup>2</sup>	Meets Letter Dimension Requirement up to 15.99 ozs.	0.258	0.295	0
Periodicals NP Flats	Marketing Mail NP Flats <sup>2</sup>	Eligible for both Periodicals Nonprofit & Marketing Nonprofit & Meets Flat Dimension Requirement up to 15.99 ozs.	0.328	0.234	40
Periodicals NP Letters	Marketing Mail NP Letters <sup>2</sup>	Eligible for both Periodicals Nonprofit & Marketing Nonprofit & Meets Letter Dimension Requirement up to 15.99 ozs.	0.131	0.292	0
Periodicals NP Parcels	Marketing Mail NP Parcels <sup>2</sup>	Minimum of 200 pcs or 50 lbs. Parcels under 1 pound.	1.724	0.730	136
Periodicals Parcels	Bound Printed Matter Parcels <sup>3</sup>	Bound Publication with weight 1 lb & over 3/4 inch thick.	1.190	1.210	0
Periodicals Flats	Bound Printed Matter Flats <sup>3</sup>	Bound Publication with weight 1 lb & Meets Flat Dimension Requirement.	0.820	0.333	146
Periodicals Letters	First Class Letters—Single Piece <sup>4</sup>	Mailing less than 200 pieces Meets Letter Dimension Requirement.	0.575	0.295	95
Periodicals Flats	First Class Flats—Single Piece <sup>4</sup>	Mailing less than 200 pieces & Meets Flat Dimension Requirement.	1.754	0.333	427
Periodicals Parcels	First Class Parcels—Retail <sup>4</sup>	Mailing less than 200 pieces & Meets Flat Dimension Requirement.	4.970	1.210	311
Periodicals Parcels	Parcel Select <sup>5</sup>	Unbound Publication and exceeds 3/4" thick or weighs over 15.99 ozs.	8.290	1.210	585
Periodicals Parcels	Priority Mail Commercial Parcels <sup>6</sup>	Commercial Parcels weighs under 1 pound	7.810	1.210	545
Periodicals Parcels	Priority Mail Commercial Parcels <sup>6</sup>	Commercial Parcels weighs over 1 pound but under 2 pounds.	8.580	1.210	609

TABLE 1—PENDING PERIODICALS AND ASSOCIATED RATES—Continued

Periodical	Associated class/subclass	Reason for associated class/subclass	Average price for associated class/subclass	Average periodicals price <sup>1</sup>	% Difference
Periodicals Flats .....	Priority Mail Commercial Flats <sup>6</sup> .	Commercial Flats weighs under 1 pound .....	7.650	0.333	2,197
Periodicals Flats .....	Priority Mail Commercial Flats <sup>6</sup> .	Commercial Parcels weighs over 1 pound but under 2 pounds.	7.780	0.333	2,236

<sup>1</sup> Average revenue per piece from Shape Indica for FYQ3–FY21Q2: With August approved Prices.

<sup>2</sup> Average Price based on Q3FY2020–Q2FY2021.

<sup>3</sup> Average piece with weight at least 1 pound and up to 15 pounds based on Q3FY2020–Q2FY2021.

<sup>4</sup> Average Price based on Q3FY2020–Q2FY2021.

<sup>5</sup> Average Price based on Q3FY2020–Q2FY2021 Ground and Destination Entry excluding light weight parcels.

<sup>6</sup> Average Price based on Q3FY2020–Q2FY2021.

For example, for Periodicals under one pound that meet the size requirements for Flats, mailers pay Marketing Mail Flats prices, achieved by multiplying the applicable Periodicals Flats price by 1.63, (*i.e.*, adding an additional 63 percent of the Periodicals price to the average per-piece Periodicals price to reach the average, per-piece Periodicals Flats price) and not, as some commenters understood it, by paying only 63 percent of the Periodicals price. For Periodicals weighing more than one pound or that are more than 0.75" thick, mailers pay Bound Printed Matter Parcels prices, achieved by multiplying the Periodicals Parcels price by 2.46. All of this is detailed on the Periodicals postage statement, PS Form 3541.

The non-Periodicals prices to be paid are expressed as the percentage difference between the current, average per-piece price for Periodicals and the current, average per-piece price for the corresponding product. The average prices are derived from volume and revenue data for the previous four quarters, and thus the Postal Service may update the percentages in Exhibit 5.2.3 each quarter to reflect quarterly changes in volumes and revenues.

For all of the foregoing reasons, the Postal Service disagrees with the commenter's contention that the September 30 proposal for calculating pending Periodicals prices is a price increase and is making no changes as a result of the comment. The Postal Service is, however, revising the pending postage table from the proposed rule (Exhibit 5.2.3) by adding "Nonprofit USPS Marketing Mail Parcels" as an option for eligible Periodicals during the pending authorization process. This option was inadvertently omitted from the proposal.

*Comment:* The two remaining commenters oppose the proposal on a number of grounds, though they stated that they generally support the intent to simplify and improve the current

process for calculating rates for pending Periodicals.

Primarily, these commenters state that the proposed rule appears to be a price change that must first be approved by the Commission. If the Postal Service's intent was to apply existing prices, that was not clear from, or supported by, information or discussion in the proposed rule.

The commenters also state that the proposal would result in widely divergent, often too-high, prices and, therefore, that the Postal Service should either reduce the percentages given or provide an intermediate appeals process for the mailer to seek review of the pending Periodicals price charged.

*USPS Response:* The Postal Service appreciates the commenters' support for improving the process for assessing prices for pending Periodicals.

As explained in its response to the previous comment, the Postal Service disagrees that the proposal for changing the methodology for calculating prices for pending Periodicals also proposed a change in prices. Again, the Postal Service proposed an alternative method of assigning prices to mailings while a mailer's application for Periodicals mailing privileges is pending. The new methodology assigns closely applicable non-Periodicals prices to pending Periodicals, and these prices are expressed as a percentage difference between the current, average per-piece price for Periodicals and the corresponding current, average per-piece price for the corresponding product, based upon volume and revenue for the previous four quarters. The overall result is to assess, averaged across all mailings, the same amount before and after the proposal is adopted.

Looked at somewhat differently, just as the proposal makes no direct changes in prices, it makes no indirect changes in prices either. Nothing about the proposal will force pending Periodical mailings into a higher price category because existing, associated prices are already applied, nor has the Postal

Service eliminated any rate cells or categories. *United States Postal Service v. Postal Regulatory Commission*, 785 F.3d 740, 751–52 (D.C. Cir. 2015); *United States Postal Service v. Postal Regulatory Commission*, 886 F.3d 1261, 1273 (D.C. Cir. 2018) (indirect changes in prices). In short, with no changes in prices or in available rate categories or cells, the proposal can have no price cap implications. Moreover, there is no technical way to map the changes described here on to the billing determinants—a prerequisite for any price cap analysis—because billing determinants data do not separately set out non-Periodicals rates paid by pending Periodicals volume.

The Postal Service apologizes that the proposal was not sufficiently clear and trusts that this explanation shows that it is not seeking to change prices for pending Periodicals.

As to wide fluctuation or variability in prices under the new methodology, the Postal Service does not agree that the proposed methodology results in higher prices. Because the proposed methodology is based upon historical volumes and current, average prices, it is possible that for any given mailing, a mailer may pay a different price than it would have paid under the existing methodology. But those prices may be higher than, lower than, or unchanged from the existing methodology, though the Postal Service expects the prices to be close to those given by the present methodology.

Over multiple mailings during the pendency of an application for Periodicals privileges, however, mailers should collectively be paying approximately the same prices under both the previous and proposed methodologies. As such, the Postal Service disagrees that it should reduce the proposed percentage multipliers in DMM Exhibit 5.2.3.

For that same reason, the Postal Service disagrees that it should provide an additional opportunity for review of pending Periodicals pricing. What is

more, the opportunity for this review already exists. When the Postal Service grants a mailer's application for Periodicals mailing privileges, the Postal Service refunds to the mailer the difference between the Periodicals prices for the mailings made while the application was pending and the higher, non-Periodicals prices the mailer actually paid for those mailings (DMM 207.5.2.2b, 207.5.3.5). Any mailer whose application for Periodicals privileges is denied and who therefore does not receive this refund may appeal the denial (DMM 207.5.3.7). This appeal was available to the approximately 25 percent of 289 applications for Periodicals privileges denied by the Postal Service in FY 2020 and 2021.

The Postal Service is revising the process to calculate pending postage by assigning the existing applicable class of mail prices based upon common characteristics of shape and weight. Each applicable class of mail price will be expressed as a percentage from the corresponding Periodicals price. This new process will simplify the calculation process during the authorization review period, and the refund process when a Periodicals publication is approved.

We believe this revision will provide customers with a more efficient and easier process.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)*, incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is amended as follows:

**PART 111—[AMENDED]**

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)* as follows:

**Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)**

\* \* \* \* \*

**200 Commercial Mail Letters, Flats, and Parcels**

\* \* \* \* \*

**207 Periodicals**

\* \* \* \* \*

**5.0 Applying for Periodicals Authorization**

\* \* \* \* \*

**5.2 Mailing While Application Pending**

\* \* \* \* \*

[Renumber 5.2.3 and 5.2.4 as 5.2.4 and 5.2.5, add new 5.2.3 to read as follows:]

**5.2.3 Pending Postage**

Postage for a Periodicals publication pending authorization is calculated by applying the applicable percent in Exhibit 5.2.3 to PS Form 3541, Part P, Line P–1.

**Exhibit 5.2.3 Pending Postage**

Pending class of mail	Percent
USPS Marketing Mail Letters .....	* 00
USPS Marketing Mail Flats .....	63
Nonprofit USPS Marketing Mail Letters ..	* 00
Nonprofit USPS Marketing Mail Flats .....	40
Nonprofit USPS Marketing Mail Parcels .....	136
Bound Printed Matter Flats .....	146
Bound Printed Matter Parcels .....	* 00
Parcel Select Parcels .....	585
First-Class Mail Letters .....	95
First-Class Mail Flats .....	427
First-Class Package Service-R .....	311
Priority Mail .....	545

\* Use Periodicals prices.

\* \* \* \* \*

**Ruth B. Stevenson,**  
Chief Counsel, Ethics and Legal Compliance.

[FR Doc. 2021–26716 Filed 12–7–21; 11:15 am]

**BILLING CODE P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 721**

[EPA–HQ–OPPT–2020–0131; FRL–7842–02–OCSPF]

**RIN 2070–AB27**

**Significant New Use Rules on Certain Chemical Substances (20–2.5e)**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs). 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 designated 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:** This rule is effective on February 8, 2022. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on December 27, 2021.

**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](mailto: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](mailto: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 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. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule 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. How can I access the dockets?

The dockets include information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2020-0131, is available at <https://www.regulations.gov> and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. 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 OPPT Docket is (202) 566-0280.

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>.

## II. Background

### A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for certain chemical substances which were the subject of PMNs. EPA will address the other proposed SNURs in future FR notices.

Previously, EPA proposed SNURs for these chemical substances and established the record for these SNURs in the following **Federal Register** and docket ID number:

- October 9, 2020 (85 FR 64280) (FRL-10011-86); Docket ID No. EPA-HQ-OPPT-2020-0131.

The dockets include information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the public comments received.

### 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 bulleted 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 significant new use notice (SNUN) requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, 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 significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination. If EPA determines that the significant new 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

### A. Considerations for Significant New Use Determinations

When the Agency issues an order under TSCA section 5(e), section 5(f)(4) requires that the Agency consider whether to promulgate a SNUR for any use not conforming to the restrictions of the TSCA Order or publish a statement describing the reasons for not initiating the rulemaking. 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, and potential human exposures and environmental releases that may be associated with possible uses of these chemical substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit.

### B. Procedures for Significant New Uses Claimed as CBI

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

Under these procedures a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.*, the use does not meet the criteria

specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

#### IV. Public Comments on Proposed Rule and EPA Responses

EPA received public comments from three identifying entities on the proposed rules. The Agency's responses are presented in the Response to Public Comments document that is available in the public docket for this rulemaking. In addition, EPA received three anonymous comments. The anonymous comments were either general in nature and did not pertain to the proposed rule or were broadly supportive of the rule and requested no changes to the rule itself; therefore, no response is required. EPA made changes to 27 of the proposed rules as described in the response to comments.

#### V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNURs, EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as confidential business information (CBI)).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Effective date of and basis for the TSCA Order.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substances if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.
- CFR citation assigned in the regulatory text section of these rules.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new

uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

These final rules include PMN substances that are subject to orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). Those TSCA Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The final SNURs identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA Order usually requires that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL). The comprehensive NCELS provisions in TSCA Orders include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. No comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELS as an alternative to the 40 CFR 721.63 respirator requirements may request to do so under 40 CFR 721.30. EPA expects that persons whose 40 CFR 721.30 requests to use the NCELS approach for SNURs that are approved by EPA will be required to comply with NCELS provisions that are comparable to those contained in the corresponding TSCA Order.

#### VI. Rationale and Objectives of the Rule

##### A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs and as further discussed in Unit IV. of the proposed rules, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. Based on such findings, TSCA Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As

a general matter, EPA believes it is necessary to follow TSCA Orders with a SNUR that identifies the absence of those protective measures as significant new uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

##### B. Objectives

EPA is issuing these SNURs because the Agency wants to:

- Receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- 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; and
- Be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under TSCA section 5(a)(3)(C) that significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

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 <https://www.epa.gov/tscainventory>.

#### VII. Applicability of the 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 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 a NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this 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. However, TSCA Orders have been issued for all the chemical substances that are the subject of this rule, and the PMN submitters are prohibited by the TSCA Orders from undertaking activities which will be designated as significant new uses. The identities of many of the chemical substances subject to this 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 rule are ongoing.

Furthermore, EPA designated the publication dates of the proposed rules (see Unit II.) as the cutoff dates for determining whether the new uses are ongoing. The objective of EPA's approach has been to ensure that a person could not 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 the abovementioned dates, that person will have to cease any such activity upon the effective date of the final rule. To resume their activities, that person 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.

### VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of 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 to them or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the

authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed in this document. Descriptions are provided for informational purposes. The information identified in Unit IV. of the proposed rule will be potentially useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance.

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>.

In some of the TSCA Orders for the chemical substances identified in this rule, EPA has established production volume and time limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of specified tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. The SNURs contain the same limits as the TSCA Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pending testing described in the TSCA Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of

available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information identified in Unit IV. of the proposed rule may not be the only means of addressing the potential risks of the chemical substance associated with the designated significant new uses. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA sections 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 that provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

### IX. 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 and 721.25. E-PMN software is available electronically at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca>.

### X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analyses are available in each docket listed in Unit II.

### XI. 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 action establishes 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. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017), because this action is not a significant regulatory action under Executive Order 12866.

*C. 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 information collection requirements associated with SNURs have already been approved by OMB pursuant to the PRA under OMB control number 2070-0012 (EPA ICR No. 574). This rule does not impose any burden requiring additional OMB approval.

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. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. The Information Collection Request (ICR) covering the SNUR activities was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

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 through the use of 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.

*D. 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, EPA has concluded 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. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, 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, EPA received 7 SNUNs in Federal fiscal year (FY) 2013, 13 in FY2014, 6 in FY2015, 10 in FY2016, 14 in FY2017, and 11 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 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.

*E. 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 action does 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.*).

*F. Executive Order 13132: Federalism*

This action will 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).

*G. Executive Order 13175: Consultation and Coordination With Indian Tribe Governments*

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does 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.

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

This action 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. EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

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

In addition, since this action does not involve any technical standards subject to NTTAA section 12(d) (15 U.S.C. 272 note).

*K. 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).

*L. Congressional Review Act (CRA)*

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

**List of Subjects**

*40 CFR Part 9*

Environmental protection, Reporting and recordkeeping requirements.

*40 CFR Part 721*

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

Dated: December 3, 2021.

**Tala Henry,**

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

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

**PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT**

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671;

21 U.S.C. 331j, 346a; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11401 through 721.11403 and §§ 721.11514 through 721.11555 in numerical order under the undesignated center heading “Significant New Uses of Chemical Substances” to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

40 CFR citation	OMB control No.
*	*
<b>Significant New Uses of Chemical Substances</b>	
*	*
721.11401 .....	2070–0012
721.11402 .....	2070–0012
721.11403 .....	2070–0012
*	*
721.11514 .....	2070–0012
721.11515 .....	2070–0012
721.11516 .....	2070–0012
721.11517 .....	2070–0012
721.11518 .....	2070–0012
721.11519 .....	2070–0012
721.11520 .....	2070–0012
721.11521 .....	2070–0012
721.11522 .....	2070–0012
721.11523 .....	2070–0012
721.11524 .....	2070–0012
721.11525 .....	2070–0012
721.11526 .....	2070–0012
721.11527 .....	2070–0012
721.11528 .....	2070–0012
721.11529 .....	2070–0012
721.11530 .....	2070–0012
721.11531 .....	2070–0012
721.11532 .....	2070–0012
721.11533 .....	2070–0012
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721.11541 .....	2070–0012
721.11542 .....	2070–0012
721.11543 .....	2070–0012
721.11544 .....	2070–0012
721.11545 .....	2070–0012
721.11546 .....	2070–0012
721.11547 .....	2070–0012
721.11548 .....	2070–0012
721.11549 .....	2070–0012
721.11550 .....	2070–0012
721.11551 .....	2070–0012

40 CFR citation	OMB control No.
721.11552 .....	2070–0012
721.11553 .....	2070–0012
721.11554 .....	2070–0012
721.11555 .....	2070–0012
721.11443 .....	2070–0012
*	*

\* \* \* \* \*

**PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES**

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

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

■ 4. Add §§ 721.11401 through 721.11403 and §§ 721.11514 through 721.11555 in numerical order to subpart E to read as follows:

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

Sec.	
*	*
721.11401	2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl acrylate, formats (salts) (generic).
721.11402	2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl methacrylate, formats (salts) (generic).
721.11403	2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate, and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with alkylene glycol monoacrylate, formats (salts) (generic).
*	*
721.11514	Organic sulfonate compound (generic).
721.11515	Thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonfyl-1-alkanesulfonamide (1:1) (generic).
721.11516	Sulfonium, triphenyl-, salt with 2,3-bis(substituted) 5-sulfocarbopolycyclic-2,3-carboxylate derivative (1:1) (generic).
721.11517	Thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonfyl-1-alkanesulfonamide (1:1) (generic).

- 721.11518 Sulfonium, triphenyl-, 5-(alkyl) fluoropentane derivative (generic).
- 721.11519 Sulfonium, triphenyl-, salt with substituted-alkyl 4-substituted-benzoate (generic).
- 721.11520 Substituted-triphenylsulfonium, inner salt (generic).
- 721.11521 Sulfonium, triphenyl-, salt with disubstituted-heterocyclic compound (1:1) (generic).
- 721.11522 Sulfonium, triphenyl-, salt with 2,4,5-trisubstituted-benzenesulfonate (1:1) (generic).
- 721.11523 Substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1<sup>3,7</sup>]decane-1-carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[(1-ethylcyclopentyl)oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic).
- 721.11524 Substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1<sup>3,7</sup>]decane-1-carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[[1-(1-methylethyl)cyclopentyl]oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic).
- 721.11525 Dibenzothiophenium, aryl substituted trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (generic).
- 721.11526 Substituted heterocyclic onium compound, salt with 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1<sup>3,7</sup>]decane-1-carboxylate (1:1), polymer with 3-ethenylphenol, 1-(1-methylethyl)cyclopentyl 2-methyl-2-propenoate and 1-(7-oxabicyclo[2.2.1]hept-2-yl)cyclopentyl 2-methyl-2-propenoate, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic).
- 721.11527 Sulfonium, triphenyl-, trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (generic).
- 721.11528 Heterotrisubstituted-bile acid, 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl ester, ion(1-), (5)-, triphenylsulfonium (1:1) (generic).
- 721.11529 Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (generic)
- 721.11530 Substituted, (alkylaromatic)diaromatic salt with trihalo-[(trihaloalkyl)substituted]substituted alkaneamide (generic).
- 721.11531 Triarylsulfonium substituted oxatricycloalkyloxycarbonyl dihalo alkane sulfonate (generic).
- 721.11532 Substituted triarylsulfonium carbopolycyclic heteromonocyclic dihalo sulfoacetate (generic).
- 721.11533 Substituted triarylsulfonium substituted carbopolycyclic carboxylate (generic).
- 721.11534 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with substituted heteropolycycle dihalo sulfoalkanoate (1:1) (generic).
- 721.11535 Heteropolycycle, alkylaromatic-, salt with dihalo-substituted alkyl carbopolycycle carboxylate (generic).
- 721.11536 Sulfonium, triaryl-, salt with polyhalo-4-sulfoalkyl polycarbocyclic alkane-1-carboxylate (1:1) (generic).
- 721.11537 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with dihalo substituted alkyl carbopolycyclic carboxylate (1:1) (generic).
- 721.11538 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, substituted carbomonocyclic ester (generic).
- 721.11539 Heteropolycycle, aromatic-, salt with dihalo-substituted alkyl carbopolycycle carboxylate (1:1) (generic).
- 721.11540 Triarylsulfonium alkylstersulfonate (generic).
- 721.11541 Halogenated alkylbenzoic acid (generic) (P-19-168).
- 721.11542 Halogenated alkylbenzoic acid (generic) (P-19-169).
- 721.11543 Halogenated benzoic acid (generic) (P-19-171).
- 721.11544 Halogenated benzoic acid (generic) (P-19-172).
- 721.11545 Halogenated benzoic acid (generic) (P-19-173).
- 721.11546 Halogenated alkylbenzoic acid (generic) (P-19-175).
- 721.11547 Halogenated alkylbenzoic acid (generic) (P-19-176).
- 721.11548 Halogenated alkylbenzoic acid (generic) (P-19-177).
- 721.11549 Halogenated alkylbenzoic acid (generic) (P-19-178).
- 721.11550 Halogenated alkylbenzoic acid (generic) (P-19-179).
- 721.11551 Halogenated sodium benzoate (generic) (P-19-180).
- 721.11552 Halogenated sodium benzoate (generic) (P-19-181).
- 721.11553 Halogenated sodium benzoate (generic) (P-19-182).
- 721.11554 Halogenated sodium alkylbenzoate (generic) (P-19-184).
- 721.11555 Halogenated sodium alkylbenzoate (generic) (P-19-187).
- \* \* \* \* \*
- § 721.11401 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl acrylate, formats (salts) (generic).**
- (a) *Chemical substance and significant new uses subject to reporting.*
- (1) The chemical substance identified generically as 2-propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with
- diethanolamine, polymers with substituted-alkyl acrylate, formats (salts) (PMN P-18-241) 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.
- § 721.11402 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl methacrylate, formats (salts) (generic).**
- (a) *Chemical substance and significant new uses subject to reporting.*
- (1) The chemical substance identified generically as 2-propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with substituted-alkyl methacrylate, formats (salts) (PMN P-18-244) 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.

**§ 721.11403 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate, and 1,2-propaneidol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with alkylene glycol monoacrylate, formates (salts) (generic).**

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

(1) The chemical substance identified generically as 2-propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate, and 1,2-propaneidol mono(2-methyl-2-propenoate), reaction products with diethanolamine, polymers with alkylene glycol monoacrylate, formates (salts) (PMN P-18-245) 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.

\* \* \* \* \*

**§ 721.11514 Organic sulfonate compound (generic).**

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

(1) The chemical substance identified generically as organic sulfonate compound (PMN P-16-539) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11515 Thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (generic).**

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

(1) The chemical substance identified

generically as thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (PMN P-18-157) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11516 Sulfonium, triphenyl-, salt with 2,3-bis(substituted) 5-sulfocarbopolycyclic-2,3-carboxylate derivative (1:1) (generic).**

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

(1) The chemical substance identified generically as sulfonium, triphenyl-, salt with 2,3-bis(substituted) 5-sulfocarbopolycyclic-2,3-carboxylate derivative (1:1) (PMN P-18-158), is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i), and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization, serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a

dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11517 Thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (generic).**

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

(1) The chemical substance identified generically as thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-N-polyfluoroalkylsulfonyl-1-alkanesulfonamide (1:1) (PMN P-18-159) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity;

skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11518 Sulfonium, triphenyl-, 5-(alkyl) fluoropentane derivative (generic).**

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

(1) The chemical substance identified generically as sulfonium, triphenyl-, 5-(alkyl) fluoropentane derivative (PMN P-19-33) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g.,

workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (g)(1), (a)(2)(i) through (iii) and (v), (a)(3)(i) and (ii), and (a)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11519 Sulfonium, triphenyl-, salt with substituted-alkyl 4-substituted-benzoate (generic).**

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

(1) The chemical substance identified generically as sulfonium, triphenyl-, salt with substituted-alkyl 4-substituted-benzoate (PMN P-17-178) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article

used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11520 Substituted-triphenylsulfonium, inner salt (generic).**

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

(1) The chemical substance identified generically as substituted-

triphenylsulfonium, inner salt (PMN P-18-13) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11521 Sulfonium, triphenyl-, salt with disubstituted-heterocyclic compound (1:1) (generic).**

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

(1) The chemical substance identified generically as sulfonium, triphenyl-, salt with disubstituted-heterocyclic compound (1:1) (PMN P-18-14) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11522 Sulfonium, triphenyl-, salt with 2,4,5-trisubstituted-benzenesulfonate (1:1) (generic).**

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

(1) The chemical substance identified generically as sulfonium, triphenyl-, salt with 2,4,5-trisubstituted-benzenesulfonate (1:1) (PMN P-18-37) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11523 Substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1<sup>3,7</sup>]decane-1-carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[(1-ethylcyclopentyl)oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic).**

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

(1) The chemical substance identified generically as substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1<sup>3,7</sup>]decane-1-carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[(1-ethylcyclopentyl)oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (PMN P-19-78) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11524 Substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1<sup>3,7</sup>]decane-1-carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[[1-(1-methylethyl)cyclopentyl]oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (generic).**

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

(1) The chemical substance identified generically as substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1<sup>3,7</sup>]decane-1-carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[[1-(1-methylethyl)cyclopentyl]oxy]benzene and 4-ethenylphenol, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated (PMN P-19-79) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is

a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11525 Dibenzothiophenium, aryl substituted trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (generic).**

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

(1) The chemical substance identified generically as dibenzothiophenium, aryl substituted trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (PMN P-19-111) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the



concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11526 Substituted heterocyclic onium compound, salt with 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1<sup>3,7</sup>]decane-1-carboxylate (1:1), polymer with 3-ethenylphenol, 1-(1-methylethyl)cyclopentyl 2-methyl-2-propenoate and 1-(7-oxabicyclo[2.2.1]hept-2-yl)cyclopentyl 2-methyl-2-propenoate, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropenoate]-initiated (generic).**

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

(1) The chemical substance identified generically as substituted heterocyclic onium compound, salt with 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.1<sup>3,7</sup>]decane-1-carboxylate (1:1), polymer with 3-ethenylphenol, 1-(1-methylethyl)cyclopentyl 2-methyl-2-propenoate and 1-(7-oxabicyclo[2.2.1]hept-2-yl)cyclopentyl 2-methyl-2-propenoate, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropenoate]-

initiated (PMN P-19-112) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11527 Sulfonium, triphenyl-, trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (generic).**

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

(1) The chemical substance identified generically as sulfonium, triphenyl-, trifluoro-hydroxy-(triheterosubstitutedalkyl)alkanoate (1:1) (PMN P-19-114) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to

manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11528 Heterotrisubstituted-bile acid, 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl ester, ion(1-), (5)-, triphenylsulfonium (1:1) (generic).**

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

(1) The chemical substance identified generically as heterotrisubstituted-bile acid, 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl ester, ion(1-), (5)-, triphenylsulfonium (1:1) (PMN P-19-133) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11529 Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (generic).**

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

(1) The chemical substance identified generically as aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (PMN P-18-16) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the

concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to use or process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11530 Substituted, (alkylaromatic)diaromatic salt with trihalo-[(trihaloalkyl)substituted]substituted alkaneamide (generic).**

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

(1) The chemical substance identified generically as substituted, (alkylaromatic)diaromatic salt with trihalo-[(trihaloalkyl)substituted]substituted alkaneamide (PMN P-18-297) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3),

and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11531 Triarylsulfonium substituted oxatricycloalkyloxycarbonyl dihalo alkane sulfonate (generic).**

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

(1) The chemical substance identified generically as triarylsulfonium substituted oxatricycloalkyloxycarbonyl dihalo alkane sulfonate (PMN P-18-311) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this

section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11532 Substituted triarylsulfonium carbopolycyclic heteromonocyclic dihalo sulfoacetate (generic).**

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

(1) The chemical substance identified generically as substituted triarylsulfonium carbopolycyclic heteromonocyclic dihalo sulfoacetate (PMN P-18-314) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11533 Substituted triarylsulfonium substituted carbopolycyclic carboxylate (generic).**

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

(1) The chemical substance identified generically as substituted triarylsulfonium substituted carbopolycyclic carboxylate (PMN P-18-315) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the

substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11534 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with substituted heteropolycycle dihalo sulfoalkanoate (1:1) (generic).**

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

(1) The chemical substance identified generically as sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with substituted heteropolycycle dihalo sulfoalkanoate (1:1) (PMN P-18-304) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For

purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11535 Heteropolycycle, alkylaromatic-, salt with dihalo-substituted alkyl carbopolycyclic carboxylate (generic).**

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

(1) The chemical substance identified generically heteropolycycle, alkylaromatic-, salt with dihalo-substituted alkyl carbopolycyclic carboxylate (PMN P-18-316) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which

persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11536 Sulfonium, triaryl-, salt with polyhalo-4-sulfoalkyl polycarbocyclic alkane-1-carboxylate (1:1) (generic).**

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

(1) The chemical substance identified generically as sulfonium, triaryl-, salt with polyhalo-4-sulfoalkyl polycarbocyclic alkane-1-carboxylate (1:1) (PMN P-18-338) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The

requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11537 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with dihalo substituted alkyl carbopolycyclic carboxylate (1:1) (generic).**

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

(1) The chemical substance identified generically as sulfonium, bis(dihalocarbomonocycle) carbomonocycle, salt with dihalo substituted alkyl carbopolycyclic carboxylate (1:1) (PMN P-19-76) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11538 Sulfonium, bis(dihalocarbomonocycle) carbomonocycle, substituted carbomonocyclic ester (generic).**

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

(1) The chemical substance identified generically as sulfonium, bis(dihalocarbomonocycle) carbomonocycle, substituted carbomonocyclic ester (PMN P-19-115) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11539 Heteropolycycle, aromatic-, salt with dihalo-substituted alkyl carbopolycycle carboxylate (1:1) (generic).**

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

(1) The chemical substance identified generically as heteropolycycle, aromatic-, salt with dihalo-substituted alkyl carbopolycycle carboxylate (1:1) (PMN P-19-142) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii)

and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11540 Triarylsulfonium alkylestersulfonate (generic).**

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

(1) The chemical substance identified generically as triarylsulfonium alkylestersulfonate (PMN P-19-166) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during the photolithographic process) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1),

engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (e), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance in any physical state other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to use or process the substance in any way that generates a dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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 (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)(iii) of this section.

**§ 721.11541 Halogenated alkylbenzoic acid (generic) (P-19-168).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkylbenzoic acid (PMN P-19-168) 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) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g.,

enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0195 mg/m<sup>3</sup> as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing the substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m<sup>3</sup>; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without implementing the engineering controls/

processes described in the TSCA Order for the substance.

(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 (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)(iii) of this section.

**§ 721.11542 Halogenated alkylbenzoic acid (generic) (P-19-169).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkylbenzoic acid (PMN P-19-169) 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) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0195 mg/m<sup>3</sup> as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative

to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach that are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing the substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m<sup>3</sup>; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance.

(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 (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)(iii) of this section.

**§ 721.11543 Halogenated benzoic acid (generic) (P-19-171).**

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

(1) The chemical substance identified generically as halogenated benzoic acid (PMN P-19-171) 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) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0195 mg/m<sup>3</sup> as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach that are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing the substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m<sup>3</sup>; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized

System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance.

(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 (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)(iii) of this section.

**§ 721.11544 Halogenated benzoic acid (generic) (P-19-172).**

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

(1) The chemical substance identified generically as halogenated benzoic acid (PMN P-19-172) 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) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.



(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0195 mg/m<sup>3</sup> as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach that are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing the substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m<sup>3</sup>; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance.

(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 (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)(iii) of this section.

**§ 721.11545 Halogenated benzoic acid (generic) (P–19–173).**

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

(1) The chemical substance identified generically as halogenated benzoic acid (PMN P–19–173) 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) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0195 mg/m<sup>3</sup> as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach that are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. For purposes of

§ 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing the substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m<sup>3</sup>; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance.

(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 (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)(iii) of this section.

**§ 721.11546 Halogenated alkylbenzoic acid (generic) (P–19–175).**

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

(1) The chemical substance identified generically as halogenated alkylbenzoic acid (PMN P–19–175) 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) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of

the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0195 mg/m<sup>3</sup> as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing the substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m<sup>3</sup>; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance.

(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 (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)(iii) of this section.

**§ 721.11547 Halogenated alkylbenzoic acid (generic) (P-19-176).**

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

(1) The chemical substance identified generically as halogenated alkylbenzoic acid (PMN P-19-176) 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) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate. For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0195 mg/m<sup>3</sup> as an 8-hour time weighted average. Persons who wish to pursue NCELS as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELS approach that are approved by EPA will be required to follow NCELS provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Respiratory complications; central nervous system

effects; internal organ effects; skin irritation; eye irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing substance; avoid ingestion; use skin protection; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m<sup>3</sup>; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance.

(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 (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)(iii) of this section.

**§ 721.11548 Halogenated alkylbenzoic acid (generic) (P-19-177).**

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

(1) The chemical substance identified generically as halogenated alkylbenzoic acid (PMN P-19-177) 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) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For

purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0195 mg/m<sup>3</sup> as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach that are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing the substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m<sup>3</sup>; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance.

(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 (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)(iii) of this section.

**§ 721.11549 Halogenated alkylbenzoic acid (generic) (P-19-178).**

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

(1) The chemical substance identified generically as halogenated alkylbenzoic acid (PMN P-19-178) 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) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0195 mg/m<sup>3</sup> as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach that are approved by EPA will be required to follow NCELs provisions comparable to those

contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing the substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m<sup>3</sup>; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance.

(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 (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)(iii) of this section.

**§ 721.11550 Halogenated alkylbenzoic acid (generic) (P-19-179).**

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

(1) The chemical substance identified generically as halogenated alkylbenzoic acid (PMN P-19-179) 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) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (iii), and (iv), (a)(3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as

required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(a)(6), the airborne form(s) of the substance include particulate, gas/vapor (all substances in the gas form), combination gas/vapor and particulate (gas and liquid/solid physical states are present; a good example is paint spray mist, which contains both liquid droplets and vapor). For purposes of § 721.63(b), the concentration is set at 1.0%.

(A) As an alternative to the respirator requirements in paragraph (a)(2)(i) of this section, a manufacturer or processor may choose to follow the new chemical exposure limit (NCEL) provision listed in the TSCA Order for this substance. The NCEL is 0.0195 mg/m<sup>3</sup> as an 8-hour time weighted average. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach that are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA Order.

(B) [Reserved]

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f) and (g)(1), (2), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. For purposes of § 721.72(g)(2), when using this substance: Avoid skin contact; avoid breathing the substance; avoid ingestion; use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 0.0195 mg/m<sup>3</sup>; use skin protection. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k), (q), and (t). It is a significant new use to manufacture or process the substance without

implementing the engineering controls/processes described in the TSCA Order for the substance.

(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 (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)(iii) of this section.

**§ 721.11551 Halogenated sodium benzoate (generic) (P-19-180).**

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

(1) The chemical substance identified generically as halogenated sodium benzoate (PMN P-19-180) 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) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance. It is a significant new use to manufacture or use the substance other than in liquid formulations.

(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 (f) through (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)(ii) of this section.

**§ 721.11552 Halogenated sodium benzoate (generic) (P-19-181).**

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

(1) The chemical substance identified generically as halogenated sodium benzoate (PMN P-19-181) 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) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance. It is a significant new use to manufacture or use the substance other than in liquid formulations.

(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 (f) through (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)(ii) of this section.

**§ 721.11553 Halogenated sodium benzoate (generic) (P-19-182).**

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

(1) The chemical substance identified generically as halogenated sodium benzoate (PMN P-19-182) 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) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance. It is a significant new use to manufacture or use the substance other than in liquid formulations.

(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 (f) through (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.

**§ 721.11554 Halogenated sodium alkylbenzoate (generic) (P-19-184).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated sodium alkylbenzoate (PMN P-19-184) 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) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. Alternative hazard and warning statements that

meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance. It is a significant new use to manufacture or use the substance other than in liquid formulations.

(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 (f) through (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)(ii) of this section.

**§ 721.11555 Halogenated sodium alkylbenzoate (generic) (P-19-187).**

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated sodium alkylbenzoate (PMN P-19-187) 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) *Hazard communication.*

Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; eye irritation; respiratory complications; central nervous system effects; internal organ effects; reproductive effects; developmental effects. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q). It is a significant new use to manufacture or process the substance without implementing the engineering controls/processes described in the TSCA Order for the substance. It is a significant new use to manufacture or use the substance other than in liquid formulations.

(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 (f) through (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)(ii) of this section.

\* \* \* \* \*

[FR Doc. 2021-26683 Filed 12-9-21; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R01-OAR-2021-0580; FRL-8967-02-R1]

**Air Plan Approval; Rhode Island; 2015 Ozone NAAQS Interstate Transport Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island as meeting the Clean Air Act (CAA) requirement that each State's SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone national ambient air quality standards (NAAQS) in any other state. This action is being taken in accordance with the CAA.

**DATES:** This rule is effective on January 10, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2021-0580. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S.

Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1684, email [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

**Table of Contents**

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
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**I. Background and Purpose**

On September 15, 2021, EPA published a notice of proposed rulemaking (NPRM) for the State of Rhode Island. See 86 FR 51310. The NPRM proposed approval of a Rhode Island SIP revision that addresses the CAA requirement to prohibit emissions from the state that significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in other states. See CAA section 110(a)(2)(D)(i)(I) (the “good neighbor provision”). The SIP revision was submitted to EPA by Rhode Island on September 23, 2020. The rationale for EPA’s proposed action is given in the NPRM and will not be repeated here. EPA received two public comments on the NPRM, which are addressed below.

**II. Response to Comments**

One anonymous comment supported the EPA’s proposed action and suggested that EPA solicit information from residents of the State of Rhode Island as well as from residents of downwind states. We note that, before providing the submission to EPA, the Rhode Island Department of Environmental Management (RIDEM) distributed it to the public via the RIDEM website and an electronic mailing list. RIDEM also gave state residents and other interested parties a 30-day period to request a public hearing and provide public comments. In addition, EPA provided the public

with a 30-day period to comment in the **Federal Register**, the official journal of the U.S. Government that is available to all downwind states, on the proposed approval of Rhode Island’s SIP revision following publication on September 15, 2021.

The other commenter questioned why the analyses considered the effects of emissions from Rhode Island on Connecticut and New York, but seemingly not on Massachusetts—particularly Bristol County, Massachusetts, parts of which lie directly east of Rhode Island. The comment states that “prevailing winds [in this region] travel eastward” and that “EPA data shows [sic] that Bristol County . . . experiences a disproportionately high ‘Percent of Total US Anthropogenic Ozone from Upwind States’ compared to other Mass counties.”

EPA acknowledges that the prevailing winds described by the commenter do generally move from west to east in the New England area, and therefore, Massachusetts is downwind of Rhode Island. In fact, EPA’s modeling analysis does consider the impact of emissions from Rhode Island on all downwind areas within the contiguous 48 states, including Bristol County, Massachusetts, and, indeed, the data indicate that the highest projected contribution in 2021 from Rhode Island sources to an out-of-state area is 2.50 ppb to Bristol County (monitoring site 250051004; line number 242 on the Design Values and Contributions spreadsheet).<sup>1</sup>

As explained in the NPRM for this action, EPA uses a four-step interstate transport framework to address the requirements of the good neighbor provision for the 2015 ozone NAAQS. The first step is to identify downwind areas that may have problems attaining and maintaining the standard (*i.e.*, receptors). The Bristol County monitor’s projected average design value is 63.4 ppb and projected maximum design value is 65.5 ppb in 2021, which are both below the 2015 ozone NAAQS of 70 ppb. Using EPA’s definition of a projected nonattainment or maintenance receptor provided in the NPRM (a definition that Rhode Island adopted), EPA’s analysis indicates that the monitor in Bristol County, Massachusetts, is not projected to be a nonattainment or maintenance receptor

in 2021 or later years for the 2015 ozone NAAQS.

While Bristol County is considered downwind of, and impacted by, Rhode Island’s emissions, EPA’s analysis in this first step did not identify Bristol County as a receptor expected to have problems maintaining the 2015 ozone NAAQS. Thus, EPA concluded that emissions from Rhode Island sources, while having an impact on ozone levels in Bristol County, do not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in Bristol County (or elsewhere in Massachusetts), which is the relevant inquiry under CAA section 110(a)(2)(D)(i)(I).

By comparison, EPA’s analysis at step one identified other receptors, including monitoring sites west of Rhode Island in Connecticut and in New York that are projected to have problems attaining and maintaining the 2015 ozone NAAQS. For these receptors, EPA proceeded to step 2 of the four-step interstate transport framework, which considers whether emissions from Rhode Island impact air-quality problems at those receptors sufficiently such that the state is considered “linked” to those receptors and therefore warrants further review and analysis.

Based on the results of EPA’s air-quality analysis described in the proposal of this action, EPA determined that Rhode Island contributes well below the screening threshold of one percent of the 2015 ozone NAAQS (0.70 ppb) to any of these Connecticut or New York receptors, and is, therefore, not linked to downwind nonattainment and/or maintenance receptors.<sup>2,3</sup> EPA also analyzed emissions trends for ozone precursors, concluding that emissions from sources in Rhode Island will continue to decline, which lends further support to the findings from the air-quality analysis.

In sum, EPA’s analysis considered the impact of emissions from Rhode Island sources on Massachusetts (including Bristol County) but found that Rhode Island does not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in Massachusetts, because that state is not expected to have problems

<sup>2</sup> See Section I of the NPRM for an explanation of EPA’s use of a one percent screening threshold at step 2 of the four-step interstate transport framework.

<sup>3</sup> For instance, and as noted in the NPRM, the data indicate that the highest contribution in 2021 from Rhode Island to an area projected to have problems maintaining the NAAQS is 0.09 ppb to the maintenance receptor in Fairfield County, Connecticut.

<sup>1</sup> The data are given in the “Air Quality Modeling Technical Support Document for the Revised Cross-State Air Pollution Rule Update” and “Ozone Design Values and Contributions Revised CSAPR Update.xlsx,” which are included in the docket for this action.

maintaining ozone concentrations below the NAAQS. Furthermore, EPA's entire analysis concluded that Rhode Island does not significantly contribute to nonattainment or interfere with maintenance in any other state for the 2015 ozone NAAQS.

### III. Final Action

EPA is approving a Rhode Island SIP revision, which was submitted on September 23, 2020. This submission is approved as meeting CAA section 110(a)(2)(D)(i)(I) requirements that Rhode Island's SIP includes adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amounts that will contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

### IV. Statutory and Executive Order Reviews

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

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

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

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 3, 2021.

**Deborah Szaro,**

*Acting Regional Administrator, EPA Region 1.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart OO—Rhode Island

- 2. In § 52.2070(e), amend the table by adding an entry for "Transport SIP for the 2015 Ozone Standard" to the end of the table to read as follows:

#### § 52.2070 Identification of plan.

*	*	*	*	*
(e)	*	*	*	*

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
* Transport SIP for the 2015 Ozone Standard.	* Statewide .....	* Submitted 9/23/2020 .....	* 12/10/2021, [Insert Federal Register citation].	* State submitted a transport SIP for the 2015 ozone standard which shows that it does not significantly contribute to ozone nonattainment or maintenance in any other state. EPA approved this submittal as meeting the requirements of Clean Air Act Section 110(a)(2)(D)(i)(I).

[FR Doc. 2021-26674 Filed 12-9-21; 8:45 a.m.]  
 BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 422, 431, 435, 438, 440, and 457**

[CMS-9115-N2]

**Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Interoperability and Patient Access for Medicare Advantage Organizations and Medicaid Managed Care Plans, State Medicaid Agencies, CHIP Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans on the Federally-Facilitated Exchanges, and Health Care Providers**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Notification of enforcement discretion.

**SUMMARY:** This notification is to inform the public that CMS is exercising its discretion in how it enforces the payer-to-payer data exchange provisions. As a matter of enforcement discretion, CMS does not expect to take action to enforce compliance with these specific provisions until we are able to address certain implementation challenges.

**DATES:** The notification of enforcement discretion is effective on December 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Alexandra Mugge, (410) 786-4457; or Lorraine Doo, (443) 615-1309.

**SUPPLEMENTARY INFORMATION:** On May 1, 2020, we published the CMS Interoperability and Patient Access final

rule (85 FR 25510) to establish policies that advance interoperability and patient access to health information. The rule required Medicare Advantage (MA) organizations, Medicaid managed care plans, Children’s Health Insurance Program (CHIP) managed care entities, and Qualified Health Plan (QHP) issuers on the Federally-facilitated Exchanges (FfEs) (collectively referred to as “impacted payers”), to facilitate enhanced data sharing by exchanging data with other payers at the patient’s request, starting January 1, 2022, for:

- MA organizations (42 CFR 422.119(f)); or
- Medicaid managed care plans (42 CFR 438.62(b)(1)(vi)); and CHIP managed care entities (42 CFR 457.1216).

For plan or policy years beginning on or after January 1, 2022, for QHP issuers on the FfEs (45 CFR 156.221(f)), as applicable. We also required these impacted payers to incorporate and maintain the data they receive through this payer-to-payer data exchange into the enrollee’s record, with the goal of increasing transparency for patients, promoting better coordinated care, reducing administrative burden, and enabling patients to establish a collective patient health care record as they move throughout the health care system (see applicable regulations at (§ 422.119(f) for MA organizations; § 438.62(b)(1)(vi) for Medicaid managed care plans (and by extension under existing rules at § 457.1216, to CHIP managed care entities); and § 156.221(f)(i) through (iii) for QHP issuers on the FfEs). These policies are collectively referred to as the payer-to-payer data exchange requirement.

To provide payers with flexibility to support timely adoption and rapid implementation, CMS did not require an application programming interface (API) or any a specific mechanism for the payer-to-payer data exchange. Rather,

we required impacted payers to receive data in whatever format it was sent and to send data in the form and format it was received, which ultimately complicated implementation by requiring payers to accept data in different formats.

Since the rule was finalized in May 2020, multiple impacted payers have indicated to CMS that the absence of a required standard or specification for the payer-to-payer data exchange requirement is creating challenges for implementation and may lead to differences in implementation across industry, poor data quality, operational challenges, and increased administrative burden. For example, payers expressed concerns about receiving volumes of portable document format (pdf) documents and files from other payers using a variety of technical approaches—from file transfer protocols (FTP), to email, to Fast Healthcare Interoperability Resources (FHIR). Payers explained that differences in implementation approaches may create gaps in patient health information that conflict directly with the intended goal of an interoperable payer-to-payer data exchange.

After listening to stakeholder concerns about implementing the payer-to-payer data exchange requirement and considering the potential for negative outcomes that impede, rather than support, interoperable payer-to-payer data exchange, CMS published three frequently asked questions (FAQs) on the CMS and HHS Good Guidance websites<sup>1</sup> to announce that it would be exercising enforcement discretion for the payer-to-payer data exchange requirement. In one of the FAQs, CMS encouraged payers that have already developed FHIR-based application API

<sup>1</sup> Link to CMS website with FAQs for interoperability rule, and enforcement discretion: <https://www.cms.gov/about-cms/health-informatics-and-interoperability-group/faqs#122>.



solutions to support the payer-to-payer data exchange to continue to move forward with implementation. The FAQ noted that for those impacted payers that are not capable of making the data available in a FHIR-based format, we believed that this policy of exercising enforcement discretion would alleviate industry tension regarding implementation; avoid the risk of discordant, non-standard data flowing between payers; provide time for data standards to mature further; and allow payers additional time to implement the more sophisticated payer-to-payer data exchange solutions. We are now announcing that we expect to extend this exercise of enforcement discretion of the payer-to-payer data exchange requirement until we are able to address the identified implementation challenges through future rulemaking. We anticipate providing an update on any evaluation of this enforcement discretion notification and related actions during calendar year 2022. We continue to encourage impacted payers that have already developed FHIR-based API solutions to support payer-to-payer data exchange to continue to move forward with implementation and make this functionality available on January 1, 2022, or for plan or policy years beginning on or after January 1, 2022, in accordance with the CMS Interoperability and Patient Access final rule policies. However, for those impacted payers that are not capable of making the data available in a FHIR-based API format, we believe this exercise of enforcement discretion will alleviate issues regarding implementation; avoid the risk of discordant, non-standard data flowing between payers; provide time for data standards to further mature through constant development, testing, and reference implementations; and allow payers additional time to implement more sophisticated payer-to-payer data exchange solutions.

While the policy in this notification may result in temporary delay of some enrollees' ability to bring their data with them from one payer to the next, we believe this decision could ultimately lead to more standardization and cohesion of data about enrollees as CMS provides additional implementation guidance through future rulemaking.

Finally, our decision to exercise enforcement discretion for the payer-to-payer policy until future rulemaking is finalized does not affect any other existing regulatory requirements and implementation timelines finalized in the CMS Interoperability and Patient Access rule finalized on May 1, 2020.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on October 15, 2021.

Dated: December 7, 2021.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2021-26764 Filed 12-8-21; 11:15 am]

**BILLING CODE 4120-01-P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 201204-0325]

RIN 0648-BL03

#### **Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2021-2022 Biennial Specifications and Management Measures; Inseason Adjustments**

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

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures.

**SUMMARY:** This final rule announces routine inseason adjustments to management measures in commercial groundfish fisheries. This action is intended to allow commercial fishing vessels to access more abundant groundfish stocks while protecting rebuilding and depleted stocks.

**DATES:** This final rule is effective December 10, 2021.

**ADDRESSES:** This rule is accessible via the internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are available at the Pacific Fishery Management Council's website at <https://www.pcouncil.org/>.

**FOR FURTHER INFORMATION CONTACT:** Sean Matson, (206) 526-6187, email: [sean.matson@noaa.gov](mailto:sean.matson@noaa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish

off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for 2-year periods (*i.e.*, a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2021-2022 biennium for most species managed under the PCGFMP on December 11, 2020 (85 FR 79880). In general, the management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the states of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal.

At the September 2021 Council meeting, the Council's Groundfish Management Team (GMT) received requests from industry members and members of the Council's Groundfish Advisory Subpanel to examine the potential to increase sablefish trips limits for the fixed gear (FG), limited entry (LE) and open access (OA) Daily Trip Limit (DTL) fisheries north of 36° N lat., and to increase trip limits for lingcod north of 42° N latitude. The intent of increasing the sablefish limits was to increase harvest opportunities for vessels targeting sablefish, under a mix of daily, weekly, and bimonthly landings accumulation limits (commonly referred to collectively as "trip limits"); attainment of harvest targets for each DTL fishery, and the northern FG harvest guidelines for sablefish have been trending much lower than anticipated throughout 2021. To evaluate potential increases to sablefish trip limits, the GMT made model-based projections of landings under current regulations, as well as alternative sablefish trip limits, including the limits ultimately recommended by the Council, through the remainder of the year. Under the current trip limits, models predict that landings of sablefish will be far below the harvest targets for LE, and OA fixed gear sablefish DTL fisheries north of 36° N lat. Under the Council's recommended trip limits, sablefish attainment is projected to increase in the LE DTL fishery north of 36° N latitude, from between 54-59 percent attainment, up to between 86 and 95 percent. For the OA DTL fishery, north of 36° N latitude, the projected gains are more modest (from between 53 and 60 percent attainment, to between 57 and

66 percent); however, the OA model is more uncertain and less well informed than the LE model, the changes (both to LE and OA) should allow some beneficial increase in attainment, while being sufficiently precautionary.

The Council also recommended changes to trip limits for lingcod north of 42° N latitude, after request from industry and analysis by the GMT, in order to reduce regulatory discard, which results in waste and lost revenue. Projected impacts to total fishing mortality are nearly identical between the current and recommended trip limits for lingcod, and well within the margin for error, but based on the analysis by the GMT, the higher landing limits are predicted to convert lost fish as discard, into landings and revenue, rather than inspire additional effort. By maintaining the same level of effort, and total fishing mortality, this increase in trip limits is not predicted to increase bycatch of yelloweye rockfish, which is managed under a rebuilding plan, and is a constraint to this fixed gear lingcod attainment.

At its meeting on September 9–15, 2021, the Council recommended increasing trip limits for the LE and OA FG sablefish, DTL fisheries north of 36° N latitude. The Council also recommended increasing trip limits for the FG lingcod fishery, north of 42° N latitude (LE and OA), beginning as soon as possible, for the remainder of the 2021 fishing year and for subsequent November–December periods in later years until superseded. NMFS

published these inseason adjustments on October 29, 2021 (86 FR 59876), for vessels using gear other than pot/trap gear. This gear-based limitation was because of the lack of a Marine Mammal Protection Act (MMPA) 101(a)(5)(E) permit for the incidental taking of marine mammals in the sablefish pot gear commercial fisheries. West coast sablefish pot gear fisheries are considered Category II fisheries under the MMPA’s List of Fisheries, indicating occasional interactions with marine mammals, due to occasional incidental mortality and serious injury to Endangered Species Act-listed humpback whales (the CA/OR/WA stock of humpback whales). Vessels fishing for sablefish with pot gear also incidentally catch and retain other groundfish species, including lingcod. All other West Coast groundfish fisheries, including trawl and longline fisheries, are considered Category III fisheries under the MMPA, indicating a remote likelihood of, or no known serious injuries or mortalities to, marine mammals. Because sablefish pot gear fisheries are Category II fisheries, NMFS is required to issue a MMPA 101(a)(5)(E) permit for the taking of marine mammals after making a negligible impact determination (NID). NMFS published a notice of proposed issuance of a MMPA 101(a)(5)(E) permit and proposed NID in the **Federal Register** on October 22, 2021 (86 FR 58641). On December 8, 2021, NMFS issued an MMPA section 101(a)(5)(E) permit for the sablefish pot gear fishery.

These inseason adjustments increase the trip limits for vessels using pot/trap gear to match the limits in place for other FGs since October 29, 2021. The background on the rationale for the trip limit increases and the modeling that was completed in support of these inseason recommendations can be found in the preamble to 86 FR 59876 (October 29, 2021).

**Summary of Changes**

Trip limit increases for sablefish are intended to increase attainment of the LE and OA DTL fisheries, which each contribute to attainment of the non-trawl HG for sablefish north of 36° N latitude. The proposed trip limit increases do not change projected impacts to co-occurring rebuilding species as analyzed in the 2021–2022 harvest specifications because the projected impacts to those species assume that the entire sablefish Annual Catch Limit (ACL) is harvested. Recommended increases to lingcod north of 42° N latitude are intended to convert regulatory discards into landings and associated revenue, and are not predicted to increase effort or bycatch of co-occurring rebuilding species. Therefore, the Council recommended, and NMFS is implementing, by modifying Table 2, North and South to part 660, subpart E, trip limit changes for the LE FG fishery north of 40°10’ N lat., as well as Table 3, North and South to part 660, subpart F, to increase the limits as shown in tables 1 and 2 in this rule.

**TABLE 1—TRIP LIMITS BY GEAR TYPE FOR SABLEFISH NORTH OF 36° N LATITUDE FOR THE REMAINDER OF 2021 AND NOVEMBER–DECEMBER PERIODS THEREAFTER UNTIL SUPERSEDED**

	Trip limit for vessels using pot/trap gear
LEFG .....	4,500 lb (2,041 kg)/week, not to exceed 9,000 lb (4,082 kg)/2 months.
OA .....	600 lb (272 kg), or 1 landing per week of up to 3,000 lb (1,361 kg), not to exceed 6,000 lb (2,722 kg)/2 months.

**TABLE 2—TRIP LIMITS BY GEAR TYPE FOR LINGCOD NORTH OF 42° N LATITUDE FOR THE REMAINDER OF 2021 AND NOVEMBER–DECEMBER PERIODS THEREAFTER UNTIL SUPERSEDED**

	Trip limit for vessels using pot/trap gear
LEFG .....	5,000 lb (2,268 kg)/2 months.
OA .....	2,500 lb (1,134 kg)/month.

**Classification**

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is

exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Dr. Sean Matson in the West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or by visiting the NMFS West Coast Groundfish website: [https://](https://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html)

[www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html](https://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html).

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document increase trip limits for

fisheries off Washington, Oregon, and California to allow for greater attainment of allocations. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2021–2022 harvest specifications and management measures, which was published on December 11, 2020 (85 FR 79880).

The Council recommended sablefish limit changes to increase opportunity to attain harvest targets and allocations for the respective fisheries, and contribute to attainment of the ACL. New information became available at the Council's September 2021 meeting showing that harvest was tracking much lower than projections made during the harvest specifications process due to changing fishery conditions. The updated trip limits being implemented in this rule are anticipated to increase landings and fishing community revenue, while maintaining harvest within scientifically informed conservation limits, concomitant with the goals of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Council recommended increased lingcod landing limits to reduce regulatory discard; new information became available at the Council's September 2021 meeting indicating that current levels of landing limits were having the unintended consequence of causing fishers to discard substantial amounts of catch. Implementing the

recommended trip limits is projected to reduce regulatory discards, without changing attainment rate of the allocation, by enabling those fish to be landed rather than wasted, and produce fisher and community revenue.

Delaying implementation to allow for public comment would reduce the economic benefits to the commercial fishing industry and the businesses that rely on that industry because it is unlikely the new regulations would publish and could be implemented before the end of the calendar year. Therefore, providing a comment period for this action could significantly limit the economic benefits to the fishery, and would hamper the achievement of optimum yield from the affected fisheries.

Therefore, NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect commercial fisheries by increasing opportunity and relieving participants of the lower trip limits in light of information showing lower than usual attainment. These adjustments were requested by the Council's advisory bodies, as well as by members of industry during the September 2021 meeting, and recommended unanimously by the Council. No aspect of this action is controversial, and

changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2021–2022 (85 FR 79880).

#### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

Dated: December 7, 2021.

**Ngagne Jafnar Gueye,**

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

#### **PART 660—FISHERIES OFF WEST COAST STATES**

■ 1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. Revise Table 2 (North) to part 660, subpart E, to read as follows:

**Table 2 (North) to Part 660, Subpart E—Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N Lat.**

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**Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.**  
 Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 11/14/2021

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area (RCA)<sup>1/</sup>:</b>						
1	North of 46° 16' N. lat.		shoreline - 100 fm line <sup>1/</sup>			
2	46° 16' N. lat. - 40° 10' N. lat.		40 fm line <sup>1/</sup> - 100 fm line <sup>1/</sup>			
3			30 fm line <sup>1/</sup> - 40 fm line <sup>1/2/</sup>			
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	Minor Slope Rockfish <sup>3/</sup> & Darkblotched rockfish		8,000 lb/ 2 months			
5	Pacific ocean perch		3,600 lb/ 2 months			
6	Sablefish		1,700 lb/week, not to exceed 5,100 lb/ 2 months		4,500 lb/week, not to exceed 9,000 lb/ 2 months	
Higher Sep-Oct sablefish trip limits do not apply to pot/trap gear. Nov-Dec trip limits apply to all fixed gear.						
7	Longspine thornyhead		10,000 lb/ 2 months			
8	Shortspine thornyhead		2,000 lb/ 2 months		2,500 lb/ 2 months	
9	Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder. Other Flatfish <sup>4/5/</sup>		10,000 lb/ month			
10						
11						
12	Whiting		10,000 lb/ trip			
13	Minor Shelf Rockfish <sup>3/</sup>		800 lb / month			
14	Shortbelly Rockfish		200 lb / month			
15	Widow rockfish		4,000 lb/ 2 months			
16	Yellowtail rockfish		3,000 lb/ month			
17	Canary rockfish		3,000 lb/ 2 months			
18	Yelloweye rockfish		CLOSED			
19	Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish & CA black rockfish <sup>5/</sup>					
20	North of 42°00' N. lat.		5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish <sup>4/</sup>			
21	42° 00' N. lat. - 40° 10' N. lat.		7,000 lb/ 2 months, no more than 2,000 lb of which may be species other than black rockfish			
22	Lingcod <sup>6/</sup>					
23	North of 42°00' N. lat.		4,000 lb/ 2 months		5,000 lb/ 2 months	
Higher Sep-Oct lingcod trip limits do not apply to pot/trap gear. Nov-Dec trip limits apply to all fixed gear.						
24	42° 00' N. lat. - 40° 10' N. lat.		2,000 lb/2 months			
25	Pacific cod		1,000 lb/ 2 months			
26	Spiny dogfish		200,000 lb / 2 months		150,000 lb / 2 months	
27	Longnose skate		Unlimited			
28	Other Fish <sup>7/</sup> & Cabezon in California		Unlimited			
29	Oregon Cabezon/Kelp Greenling		Unlimited			
30	Big skate		Unlimited			

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Between 46°16' N. lat. and 40°10' N. lat. and the 30 fm and 40 fm lines, fishing is only allowed with hook-and-line gear except bottom longline and dinglebar gear, as defined in §660.11

3/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip. (46°38.17' N. lat.).

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.230 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Revise Table 2 (South) to part 660, subpart E, to read as follows:

**Table 2 (South) to Part 660, Subpart E—  
 Non-Trawl Rockfish Conservation  
 Areas and Trip Limits for Limited Entry  
 Fixed Gear South of 40°10' N Lat.**

**Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.**  
 Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 11/14/2021

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area (RCA)<sup>1/</sup>:</b>						
1	40° 10' N. lat. - 38° 57.5' N. lat.		40 fm line <sup>1/</sup> - 125 fm line <sup>1/</sup>			
2	38° 57.5' N. lat. - 34° 27' N. lat.		50 fm line <sup>1/</sup> - 125 fm line <sup>1/</sup>			
3	South of 34° 27' N. lat.		100 fm line <sup>1/</sup> - 150 fm line <sup>1/</sup> (also applies around islands)			
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	<b>Minor Slope rockfish<sup>2/</sup> &amp; Darkblotched</b>		40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish			
5	<b>Splitnose rockfish</b>		40,000 lb/ 2 months			
6	<b>Sablefish</b>					
7	40° 10' N. lat. - 36° 00' N. lat.		1,700 lb/week, not to exceed 5,100 lb/ 2 months		4,500 lb/week, not to exceed 9,000 lb/ 2 months	
<b>Higher Sep-Oct sablefish trip limits do not apply to pot/trap gear. Nov-Dec trip limits apply to all fixed gear.</b>						
8	South of 36° 00' N. lat.		2,500 lb/ week			
9	<b>Longspine thornyhead</b>		10,000 lb/ 2 months			
10	<b>Shortspine thornyhead</b>					
11	40° 10' N. lat. - 34° 27' N. lat.		2,000 lb/ 2 months		2,500 lb/ 2 months	
12	South of 34° 27' N. lat.		3,000 lb/ 2 months			
13	<b>Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder. Other Flatfish<sup>3/8/</sup></b>		10,000 lb/ month			
14	<b>Whiting</b>		10,000 lb/ trip			
15	<b>Minor Shelf Rockfish<sup>2/</sup></b>					
18	40° 10' N. lat. - 34° 27' N. lat.		8,000 lb. / 2 months, of which no more than 500 lb. may be vermilion			
19	South of 34° 27' N. lat.		5,000 lb. / 2 months, of which no more than 3,000lb. may be vermilion			
20	<b>Widow</b>					
21	40° 10' N. lat. - 34° 27' N. lat.		10,000 lb. / 2 months			
22	South of 34° 27' N. lat.		8,000 lb. / 2 months			
23	<b>Chilipepper</b>					
24	40° 10' N. lat. - 34° 27' N. lat.		10,000 lb. / 2 months			
25	South of 34° 27' N. lat.		8,000 lb. / 2 months			
26	<b>Shortbelly Rockfish</b>					
27	South of 40° 10' N. lat.		200 lb/ month			
28	<b>Canary rockfish</b>		3,500 lb/ 2 months			
29	<b>Yelloweye rockfish</b>		CLOSED			
30	<b>Cowcod</b>		CLOSED			
31	<b>Bronzespotted rockfish</b>		CLOSED			
32	<b>Bocaccio</b>		6,000 lb/ 2 months			
33	<b>Minor Nearshore Rockfish</b>					
34	Shallow nearshore <sup>4/</sup>		2,000 lb/ 2 months			
35	Deeper nearshore <sup>5/</sup>		2,000 lb/ 2 months			
36	<b>California Scorpionfish</b>		3,500 lb/ 2 months			
37	<b>Lingcod<sup>6/</sup></b>		1,600 lb / 2 months			
38	<b>Pacific cod</b>		1,000 lb/ 2 months			
39	<b>Spiny dogfish</b>		200,000 lb/ 2 months		150,000 lb/ 2 months	
40	<b>Longnose skate</b>		Unlimited			
41	<b>Other Fish<sup>7/</sup> &amp; Cabezon in California</b>		Unlimited			
42	<b>Big Skate</b>		Unlimited			

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(1).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(2).

6/ The commercial minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.230 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Revise Table 3 (North) to part 660, subpart F, to read as follows:

**Table 3 (North) to Part 660, Subpart F—  
 Non-Trawl Rockfish Conservation  
 Areas and Trip Limits for Open Access  
 Gears North of 40°10' N Lat.**

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40° 10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

11/14/2021

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area (RCA)<sup>1/</sup>:</b>							
1	North of 46° 16' N. lat.	shoreline - 100 fm line <sup>1/</sup>					
2	46° 16' N. lat. - 40° 10' N. lat.	40 fm line <sup>1/</sup> - 100 fm line <sup>1/</sup>					
3		30 fm line <sup>1/</sup> , 40 fm line <sup>1/2/</sup>					
See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	Minor Slope Rockfish <sup>3/</sup> & Darkblotched rockfish	2,000 lb / months					
5	Pacific ocean perch	100 lb/ month					
6	Sablefish	600 lb/day, or 1 land/week up to 2,000 lb, not to exceed 4,000 lb / 2 months				600 lb/day, or 1 land/week up to 3,000 lb, not to exceed 6,000 lb / 2 months	
Higher Sep-Oct sablefish trip limits do not apply to pot/trap gear. Nov-Dec trip limits apply to all gear.							
7	Shortpine thornyheads	50 lb/month					
8	Longspine thornyheads	50 lb/month					
9	Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other	5,000 lb/ month					
10	Flatfish <sup>4/8/</sup>	5,000 lb/ month					
11	Whiting	300 lb/ month					
12	Minor Shelf Rockfish <sup>3/</sup>	800 lb / month					
13	Widow rockfish	2,000 lb/ 2 months					
14	Shortbelly Rockfish	200 lb / month					
15	Yellowtail rockfish	1,500 lb/ month					
16	Canary rockfish	1,000 lb/ 2 months					
17	Yelloweye rockfish	CLOSED					
18	Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish & CA black rockfish	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish <sup>5/</sup>					
19	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish <sup>5/</sup>					
20	42° 00' N. lat. - 40° 10' N. lat.	7,000 lb/ 2 months, no more than 2,000 lb of which may be species other than black rockfish					
21	Lingcod <sup>6/</sup>	7,000 lb/ 2 months, no more than 2,000 lb of which may be species other than black rockfish					
22	North of 42° 00' N. lat.	2,000 lb/ month				2,500 lb/ month	
23	Higher Sep-Oct lingcod trip limits do not apply to pot/trap gear. Nov-Dec trip limits apply to all gear.						
24	42° 00' N. lat. - 40° 10' N. lat.	1,000 lb / month					
25	Pacific cod	1,000 lb/ 2 months					
26	Spiny dogfish	200,000 lb/ 2 months		150,000 lb/ 2 months		100,000 lb/ 2 months	
27	Longnose skate	Unlimited					
28	Big skate	Unlimited					
29	Other Fish <sup>7/</sup> & Cabezon in California	Unlimited					
30	Oregon Cabezon/Kelp Greenling	Unlimited					
31	SALMON TROLL (subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)						
32	North	Salmon trollers may retain and land up to 500 lb of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." These limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
33	PINK SHRIMP NON-GROUNDFISH TRAWL (not subject to RCAs)						
34	North	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Between 46° 16' N. lat. and 40° 10' N. lat. and the 30 fm and 40 fm lines, fishing is only allowed with hook-and-line gear except bottom longline and dinglebar gear, as defined in §660.11

3/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ Open access vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 5. Revise Table 3 (South) to part 660, subpart F, to read as follows:

**Table 3 (South) to Part 660, Subpart F—  
Non-Trawl Rockfish Conservation  
Areas and Trip Limits for Open Access  
Gears South of 40°10' N Lat.**

**Table 3 (South) to Part 660, Subpart F – Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.**  
Other limits and requirements apply – Read §§660.10 through 660.399 before using this table

11/14/2021

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area (RCA)<sup>1/</sup>:</b>						
1	40° 10' N. lat. - 38°57.5' N. lat.		40 fm line <sup>1/</sup> - 125 fm line <sup>1/</sup>			
2	38°57.5' N. lat. -34°27' N. lat.		50 fm line <sup>1/</sup> - 125 fm line <sup>1/</sup>			
3	South of 34° 27' N. lat.		100 fm line <sup>1/</sup> - 150 fm line <sup>1/</sup> (also applies around islands)			
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	<b>Minor Slope Rockfish<sup>2/</sup> &amp; Darkblotched rockfish</b>	10,000 lb/ 2 months, of which no more than 2,500 lb may be blackgill rockfish				
5	<b>Splitnose rockfish</b>	200 lb/ month				
6	<b>Sablefish</b>					
7	40° 10' N. lat. - 36° 00' N. lat.	600 lb/day, or 1 land/week up to 2,000 lb, not to exceed 4,000 lb/2 months			600 lb/day, or 1 land/week up to 3,000 lb, not to exceed 6,000 lb/2 months	
Higher Sep-Oct sablefish trip limits do not apply to pot/trap gear. Nov-Dec trip limits apply to all gear.						
8	South of 36° 00' N. lat.	2,000 lb/week, not to exceed 6,000 lb/2 months				
9	<b>Shortpine thornyheads</b>					
10	40° 10' N. lat. - 34° 27' N. lat.	50 lb/ month				
11	<b>Longspine thornyheads</b>					
12	40° 10' N. lat. - 34° 27' N. lat.	50 lb/ month				
13	<b>Shortpine thornyheads and longspine</b>					
14	South of 34° 27' N. lat.	100 lb/day, no more than 1,000 lb/ 2 months				
15	<b>Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other</b>	5,000 lb/ month				
16	<b>Flatfish<sup>3/6/</sup></b>	300 lb/ month				
17	<b>Whiting</b>	300 lb/ month				
18	<b>Minor Shelf Rockfish<sup>2/</sup></b>					
19	40° 10' N. lat. - 34° 27' N. lat.	4,000 lb. / 2 months, of which no more than 400 lb. may be vermilion				
20	South of 34° 27' N. lat.	3,000 lb. / 2 months, of which no more than 1,200lb. may be vermilion				
21	<b>Widow</b>					
22	40° 10' N. lat. - 34° 27' N. lat.	6,000 lb. / 2 months				
23	South of 34° 27' N. lat.	4,000 lb. / 2 months				
24	<b>Chilipepper</b>					
25	40° 10' N. lat. - 34° 27' N. lat.	6,000 lb. / 2 months				
26	South of 34° 27' N. lat.	4,000 lb. / 2 months				
27	<b>Shortbelly Rockfish</b>					
28	South of 40°10' N. lat.	200 lb/ month				
29	<b>Canary rockfish</b>	1,500 lb/ 2 months				
30	<b>Yelloweye rockfish</b>	CLOSED				
31	<b>Cowcod</b>	CLOSED				
32	<b>Bronzespotted rockfish</b>	CLOSED				
33	<b>Bocaccio</b>	4,000 lb/ 2 months				
34	<b>Minor Nearshore Rockfish</b>					
35	Shallow nearshore <sup>4/</sup>	2,000 lb/ 2 months				
36	Deeper nearshore <sup>3/</sup>	2,000 lb/ 2 months				
37	<b>California Scorpionfish</b>	3,500 lb/ 2 months				
38	<b>Lingcod<sup>6/</sup></b>	700 lb / months				
39	<b>Pacific cod</b>	1,000 lb/ 2 months				
40	<b>Spiny dogfish</b>	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months		
41	<b>Longnose skate</b>	Unlimited				
42	<b>Big skate</b>	Unlimited				
43	<b>Other Fish<sup>7/</sup> &amp; Cabezon in California</b>	Unlimited				

TABLE 3 (South)

Table 3 (South) Continued

Other limits and requirements apply-- Read §§660.10 through 660.399 before using this table		9/24/2021					
		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area (RCA)<sup>1/</sup>:</b>							
40	40°10' N. lat. - 38°57.5' N. lat.	40 fm line <sup>1/</sup> - 125 fm line <sup>1/</sup>					
41	38°57.5' N. lat. - 34°27' N. lat.	50 fm line <sup>1/</sup> - 125 fm line <sup>1/</sup>					
42	South of 34°27' N. lat.	100 fm line <sup>1/</sup> - 150 fm line <sup>1/</sup> (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
43 <b>SALMON TROLL</b> (subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)							
44	South of 40°10' N. lat.	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40°10' and 34°27' N. lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
45 <b>RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUND FISH TRAWL</b>							
46 <b>NON-GROUND FISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber &amp; Ridgeback Prawn:</b>							
47	40°10' N. lat. - 38°00' N. lat.	100 fm line <sup>1/</sup> - 200 fm line <sup>1/</sup>	100 fm line <sup>1/</sup> - 150 fm line <sup>1/</sup>			100 fm line <sup>1/</sup> - 200 fm line <sup>1/</sup>	
48	38°00' N. lat. - 34°27' N. lat.	100 fm line <sup>1/</sup> - 150 fm line <sup>1/</sup>					
49	South of 34°27' N. lat.	100 fm line <sup>1/</sup> - 150 fm line <sup>1/</sup>					
50		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
51 <b>PINK SHRIMP NON-GROUND FISH TRAWL GEAR</b> (not subject to RCAs)							
52	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

Table 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-m depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow/Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(1).

5/ "Deeper/Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(2).

6/ The commercial minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling of California and leopard shark.

8/ Open access vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.330 (d) of the regulations for more information.

[FR Doc. 2021-26826 Filed 12-9-21; 8:45 am]  
BILLING CODE 3510-22-C

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 211203-0251]

RIN 0648-BL01

**Fisheries Off West Coast States; Emergency Action to Temporarily Reopen the Sablefish Primary Fishery Season for Vessels Using Pot Gear**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; emergency action.

**SUMMARY:** This emergency rule temporarily reopens the 2021 sablefish primary fishery for vessels using pot/trap gear effective December 10, 2021, to December 31, 2021. This action is necessary to provide operational flexibility so that vessels in the sablefish primary fishery are able to fully harvest their tier limits despite high economic uncertainty in 2021.

**DATES:** Effective December 10, 2021, until December 31, 2021.

**ADDRESSES:**

**Electronic Access**

This emergency rule and supporting documents, including a Supplemental Information Report prepared for this action, are accessible via the internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are also available at the NMFS West Coast Region website at: <https://www.fisheries.noaa.gov/species/west-coast-groundfish> and at the Pacific Fishery Management Council's website at [https://www.pcouncil.org/managed\\_fishery/groundfish/](https://www.pcouncil.org/managed_fishery/groundfish/).

**FOR FURTHER INFORMATION CONTACT:** Abbie Moyer, phone: 206-305-9601, or email: [Abbie.moyer@noaa.gov](mailto:Abbie.moyer@noaa.gov).



**SUPPLEMENTARY INFORMATION:** The primary sablefish fishery tier program is a limited access privilege program set up under Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP); which was approved by the Pacific Fishery Management Council (Council) in 2000 and was implemented by NMFS in 2001 (66 FR 41152, August 7, 2001). Participants hold limited entry permits with a pot gear and/or longline gear endorsement and a sablefish endorsement.

Under Amendment 14, as set out in 50 CFR 660.231, the permit holder of a sablefish-endorsed permit receives a tier limit, which is an annual share of the sablefish catch allocation to this sector. NMFS sets three different tier limits through the biennial harvest specifications and management measures process (for the 2021 limits, see 85 FR 79880, December 11, 2020); and up to three permits may be stacked at one time on a vessel participating in the fishery. Stacked tier limits are combined to provide a cumulative catch limit for that vessel. After vessels have caught their full tier limits, they are allowed to move into other fisheries for sablefish, specifically the daily trip limit (DTL) fishery or the open access fishery, or fisheries for other species.

Under Amendment 14, the sablefish primary season has historically been open from April 1 through October 31 of each year, though individual permit holders may only fish up to their tier limits so may be required to cease fishing prior to October 31. These season dates were put into regulation during the development and implementation of the fishery under Amendment 14. Prior to the implementation of Amendment 14, the sablefish fishery had operated as a 'derby' style fishery, with a season length lasting a few weeks to a few days. Under Amendment 14, the fishery began operating under a 7-month season. The 7-month season structure, as opposed to a year-long season, was intended to allow for timely catch accounting so that the sector allocation was not exceeded.

At the September 2021 Council meeting, the Council's Groundfish Management Team (GMT) provided analysis of the 2021 sablefish primary fishery participation and performance compared to prior years of the fishery. The GMT demonstrated in their analysis that from 2011 to 2019, annual attainment averaged over 90 percent of total sablefish tier allocations, with 65 percent harvested between April and mid-September. By contrast, the GMT showed the fishery in 2021 has only attained 42 percent of its allocation as

of mid-September. This underattainment is attributed to unforeseen delays related to the ongoing COVID-19 pandemic that have resulted in management problems for the harvesting fleet, processors and sales managers to catch, process and market sablefish in a timely manner within the current sablefish primary fishery season of April 1, 2021, to October 31, 2021. The GMT estimated that if the sablefish primary fishery season closed on October 31, 2021, the fishery would only attain 64 percent of its allocation, which equates to about \$2.76 million in lost ex-vessel revenue and additional economic benefits for coastal communities. Because of this risk and uncertainty, members of industry and the Council Groundfish Advisory Subpanel (GAP) and GMT advisory bodies recommended the Council take emergency action to extend the sablefish primary fishery season in 2021 to reduce economic hardships.

The Council reviewed the information provided by the GMT and by fishery stakeholders and discussed options to provide relief to commercial fishermen in this sector from economic losses as a result of the recent unforeseen events associated with the ongoing COVID-19 pandemic that began in approximately March 2020. These unforeseen events have adversely affected commercial fishermen throughout the Council's jurisdiction for an extended period of time. These events have also caused serious management problems by making it more difficult to achieve optimum yield (OY) for sablefish.

On October 29, 2021, NMFS took emergency action to extend the sablefish primary fishery season for vessels using bottom longline gear from October 31 to December 31 for the 2021 fishing year (86 FR 59873). The emergency action also extended the incidental halibut retention allowance for the sablefish primary fishery, north of Point Chehalis, Washington, from October 31 to December 7, 2021. The Council recommended the emergency extension for the sablefish primary fishery, which includes vessels fishing with longline and/or pot gear. Due to lack of a Marine Mammal Protection Act (MMPA) section 101(a)(5)(E) permit for sablefish pot gear, however, NMFS only issued the temporary season extension for vessels using bottom longline gear.

On October 22, 2021, NMFS published a notice of proposed issuance of a MMPA section 101(a)(5)(E) permit and proposed negligible impact determination (NID) (86 FR 58641). On December 10, 2021, NMFS will issue a MMPA section 101(a)(5)(E) permit for the sablefish pot gear fishery.

### Criteria and Justification for Emergency Action

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of Commerce to implement emergency regulations to address fishery emergencies. NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421; August 21, 1997) list three criteria for determining whether an emergency exists. Specifically, NMFS' policy guidelines require that an emergency: (1) Result from recent, unforeseen events or recently discovered circumstances; (2) present serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

NMFS has evaluated all relief mechanisms, and given the limited time remaining in the sablefish primary fishery season extension, an emergency action to reopen the fishery for vessels using pot/trap gear is the only mechanism sufficient to provide participants access to their quota. NMFS is issuing this emergency rule in compliance with these guidelines to prevent significant direct economic loss and preserve economic opportunities that otherwise might be foregone.

This emergency action will help the fishery achieve, but not exceed, the allocation of sablefish to the sablefish primary fishery, and the sablefish annual catch limit. NMFS evaluated the anticipated effects of this emergency action and determined that the effects fall within those described in the Environmental Assessment for the 2021-2022 Groundfish Harvest Specifications and Management Measures; which is tiered from the Harvest Specifications and Management Measures for 2015-2016 and Biennial Periods Thereafter Final Environmental Impact Statement (EIS) which discloses the longer-term framework and environmental impacts of the biennial specifications process. NMFS documented this decision-making process in a Supplemental Information Report (see ADDRESSES).

### Emergency Measures

Effective December 10, 2021, this action temporarily reopens the 2021 sablefish primary season for limited entry, sablefish-endorsed vessels using

pot/trap gear North of 36° N lat., to December 31, 2021 as defined at 50 CFR 660.11.

**Classification**

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the PCGFMP, section 305(c) and other provisions of the Magnuson-Stevens Act, the Administrative Procedure Act (APA), and other applicable law. Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries finds good cause to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest.

The Council made an emergency modification to their September 2021 meeting agenda to consider taking emergency action in response to requests from industry representatives, the Groundfish Advisory Panel, and the public. These entities raised concerns that many vessels would be unable to harvest their allocations before the sablefish primary fishery season closed due to unforeseen issues resulting from restrictions associated with the COVID-19 pandemic. Providing prior notice through proposed rulemaking and public comment period in the normal rulemaking process would be counter to public interest by delaying implementation of emergency measures intended to address a time-sensitive management problem. Further delays to extend the season through emergency action would jeopardize the ability of sablefish primary fishery participants to land allocations, and avoid economic hardship. For the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior opportunity to comment on these emergency measures.

Additionally, this rule is exempt from the 30-day delayed effectiveness provision of the APA under 5 U.S.C. 553(d)(3) because it would be counter to public interest to delay implementation of emergency measures intended to address a time-sensitive management problem, consistent to the rationale described above. Waiving the 30-day delayed effectiveness for this rule is necessary allow maximum socioeconomic benefits to the fishery and coastal communities in Washington, Oregon, and California. Not extending the sablefish primary fishery season for vessels using pot/trap gear would present immediate serious

economic impacts without contributing to the economic goals of the sablefish tier program.

This action is being taken pursuant to the emergency provision of Magnuson-Stevens Act and is exempt from Office of Management and Budget (OMB) review. This final rule has been determined to be not significant for purposes of Executive Order 12866.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This action does not contain a collection-of-information requirements for purposes of the Paperwork Reduction Act.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian fisheries.

Dated: December 6, 2021.

**Samuel D. Rauch, III**

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

**PART 660—FISHERIES OFF WEST COAST STATES**

■ 1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.25, add paragraphs (b)(4)(v)(C)(2) and (b)(4)(vi)(D)(3) to read as follows:

**§ 660.25 Permits.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(v) \* \* \*

(C) \* \* \*

(2) *Emergency rule extending sablefish primary season for vessels using pot gear.* Effective December 10, 2021, until December 31, 2021, notwithstanding any other section of this part, the primary sablefish season described at § 660.231 is extended until December 31 for vessels registered to a sablefish-endorsed limited entry permit using pot/trap gear, as defined at § 660.11.

\* \* \* \* \*

(vi) \* \* \*

(D) \* \* \*

(3) *Emergency rule extending sablefish primary season for vessels*

*using pot gear.* Effective December 10, 2021, until December 31, 2021, notwithstanding any other section of this part, the primary sablefish season described at § 660.231 is extended until December 31 for vessels registered to a sablefish-endorsed limited entry permit using pot/trap gear, as defined at § 660.11.

\* \* \* \* \*

■ 3. In § 660.213, add paragraph (d)(2)(ii) to read as follows:

**§ 660.213 Fixed gear fishery—recordkeeping and reporting.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) *Emergency rule extending sablefish primary season for vessels using pot gear.* Effective December 10, 2021, until December 31, 2021, notwithstanding any other section of this part, the primary sablefish season described at § 660.231 is extended until December 31 for vessels registered to a sablefish-endorsed limited entry permit using pot/trap gear, as defined at § 660.11.

\* \* \* \* \*

■ 4. In § 660.231, add paragraph (b)(1)(ii) to read as follows:

**§ 660.231 Limited entry fixed gear sablefish primary fishery.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) *Emergency rule extending sablefish primary season for vessels using pot gear.* Effective December 10, 2021, until December 31, 2021, notwithstanding any other section of this part, North of 36° N lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels using pot/trap gear, as defined at § 660.11, closes at 12 midnight local time on December 31, or closes for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

\* \* \* \* \*

# Proposed Rules

Federal Register

Vol. 86, No. 235

Friday, December 10, 2021

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 53

[NRC–2019–0062]

RIN 3150–AK31

### Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Availability of preliminary proposed rule language; extension of comment period.

**SUMMARY:** On November 8, 2021, the U.S. Nuclear Regulatory Commission (NRC) reopened the comment period on the preliminary proposed rule language for a risk-informed, technology-inclusive framework for reactor licensing. The public comment period was scheduled to close on January 31, 2022. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

**DATES:** The due date of comments requested in the document published on November 8, 2021 (86 FR 61718), is extended. Comments should be filed no later than August 31, 2022. Comments received after this date will be considered in the development of the proposed rule if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments on preliminary rule language by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2019–0062. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

**FOR FURTHER INFORMATION CONTACT:**

Robert Beall, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3874; email: [Robert.Beall@nrc.gov](mailto:Robert.Beall@nrc.gov); or Nanette Valliere, Office of Nuclear Reactor Regulation, telephone: 301–415–8462; email: [Nanette.Valliere@nrc.gov](mailto:Nanette.Valliere@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

#### I. Obtaining Information

##### A. Obtaining Information

Please refer to Docket ID NRC–2019–0062 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–2019–0062.
- *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, at 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for the preliminary proposed rule text is ML20289A534.

##### B. Submitting Comments

Please include Docket ID NRC–2019–0062 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. Discussion

On November 6, 2020 (85 FR 71002), the NRC requested comments on preliminary proposed rule language for a risk-informed, technology-inclusive framework for reactor licensing. This original public comment period closed on November 5, 2021. The NRC reopened the comment period on November 8, 2021, with a closure date of January 31, 2022 (86 FR 61718). The NRC has now decided to extend the public comment period until August 31, 2022. This comment period extension reflects the extension of the Risk-informed, Technology-Inclusive Regulatory Framework for Advanced Reactors (part 53) rulemaking schedule by 9 months (ADAMS accession number ML21333A222). The additional time to develop the part 53 proposed rule will enable members of the public to continue to submit their comments. This increases the time for stakeholder engagement and for the NRC staff to iterate on the preliminary proposed rule language during the development of the proposed rule.

Dated: December 6, 2021.

For the Nuclear Regulatory Commission.

**John R. Tappert,**

*Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2021–26877 Filed 12–9–21; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2021–1029; Airspace Docket No. 21–ACE–14]

RIN 2120–AA66

### Amendment of VOR Federal Airway V–175 in the Vicinity of Malden, MO

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

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

**SUMMARY:** This action proposes to modify VHF Omnidirectional Range (VOR) Federal airway V-175 in the vicinity of Malden, MO. This action is necessary due to the planned decommissioning of the Malden, MO, VOR Tactical Air Navigation (VORTAC) facility, which provides navigation guidance for a segment of the route.

**DATES:** Comments must be received on or before January 24, 2022.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590; telephone: 1 (800) 647-5527 or (202) 366-9826. You must identify FAA Docket No. FAA-2021-1029; Airspace Docket No. 21-ACE-14 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>.

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/](https://www.faa.gov/air_traffic/publications/). For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov) or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

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

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the

safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

**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 (FAA Docket No. FAA-2021-1029; Airspace Docket No. 21-ACE-14) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at <https://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2021-1029; Airspace Docket No. 21-ACE-14." The postcard will be date/time stamped and returned to the commenter.

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

**Availability of NPRM's**

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/](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 **ADDRESSES** section for 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 office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA, 30337.

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

This document proposes to amend FAA Order 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 proposed rule. 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 to amend VOR Federal airway V-175 in the vicinity of Malden, MO, due to the planned decommissioning of the Malden, MO, VORTAC as part of the FAA VOR MON program. The proposed route change is described below.

V-175: V-175 currently consists of three separate parts: From Malden, MO; Vichy, MO; to Hallsville, MO; From Kirksville, MO; to Des Moines, IA; and From Worthington, MN; Redwood Falls, MN; to Alexandria, MN.

The FAA proposes to remove the Malden VORTAC from the route description. As proposed, V-175 would extend, in three parts: From Vichy, MO, to Hallsville, MO; From Kirksville, MO, to Des Moines, IA; and From Worthington, MN, Redwood Falls, MN to Alexandria, MN.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be subsequently published in FAA Order 7400.11.

FAA Order 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 proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of

Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### Environmental Review

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

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

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

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

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

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

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

##### § 71.1 [Amended]

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

*Paragraph 6010(a) Domestic VOR Federal Airways.*

\* \* \* \* \*

##### V-175 [Amended]

From Vichy, MO; to Hallsville, MO. From Kirksville, MO; to Des Moines, IA. From Worthington, MN; Redwood Falls, MN; to Alexandria, MN.

\* \* \* \* \*

Issued in Washington, DC, on December 2, 2021.

**Michael R. Beckles,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2021–26685 Filed 12–9–21; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2021–0636; Airspace Docket No. 21–ASW–13]

RIN 2120–AA66

#### Proposed Amendment of Class E Airspace; Uvalde, TX

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

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

**SUMMARY:** This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Garner Field Airport, Uvalde, TX. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Uvalde non-directional beacon (NDB).

**DATES:** Comments must be received on or before January 24, 2022.

**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–2021–0636/Airspace Docket No. 21–ASW–13, 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. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov) or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101

Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

#### 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 Garner Field Airport at Uvalde, TX, due to the decommissioning of the Uvalde NDB 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–2021–0636/Airspace Docket No. 21–ASW–13." 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/](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 Order 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 at Garner Field Airport at Uvalde, TX, by removing the Uvalde NDB, and the associated extensions from the airspace legal description as they are no longer required; to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Uvalde NDB.

Class E airspace designations are published in paragraph 6005 of FAA Order 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 FAA Order JO 7400.11.

FAA Order 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 Order 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 Uvalde, TX [Amended]**

Garner Field Airport at Uvalde, TX (Lat. 29°12'41" N, long. 99°44'37" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Garner Field Airport.

Issued in Fort Worth, Texas, on December 3, 2021.

**Martin A. Skinner,**

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

[FR Doc. 2021–26656 Filed 12–9–21; 8:45 am]

**BILLING CODE 4910–13–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 80 and 1090**

**[EPA–HQ–OAR–2021–0324; FRL–9083–01–OAR]**

**RIN 2060–AV11**

### **Public Hearing for RFS Annual Rules**

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

**ACTION:** Notification of public hearing.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing a virtual public hearing to be held on January 4, 2022, on its proposal for the "Renewable Fuel Standard (RFS) Program: RFS Annual Rules," which was signed on December 7, 2021. An additional session will be held on January 5, 2022, if necessary, to accommodate the number of testifiers that sign-up to testify. EPA is proposing the 2020, 2021, and 2022 renewable fuel standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel. EPA is also proposing to address the remand of the 2016 standard-setting rulemaking, extend certain RFS compliance and attest engagement reporting deadlines for the 2019, 2020, and 2021 compliance years, and several regulatory changes to the RFS program.

**DATES:** EPA will hold a virtual public hearing on January 4, 2022. An additional session will be held on January 5, 2022, if necessary, to accommodate the number of testifiers that sign-up to testify. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

**ADDRESSES:** The virtual public hearing will be held on January 4, 2022. An additional session will be held on January 5, 2022, if necessary, to accommodate the number of testifiers that sign-up to testify. The hearing will begin at 9 a.m. Eastern Time (ET) and end when all parties who wish to speak have had an opportunity to do so, but no later than 5 p.m. ET. All hearing attendees (including even those who do not intend to provide testimony) should register for the public hearing by December 20, 2021. Information on how

to register can be found at <https://www.epa.gov/renewable-fuel-standard-program/public-hearing-information-proposed-renewable-fuel-standards-2020>. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Nick Parsons, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4479; email address: [ASD-Registration@epa.gov](mailto:ASD-Registration@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is proposing to modify the 2021 and 2022 statutory volume targets for cellulosic biofuel, advanced biofuel, and total renewable fuel, and to establish the 2022 volume target for biomass-based diesel, as well as to modify the previously established cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements for 2020. In addition, EPA is proposing the 2020, 2021, and 2022 renewable fuel standards for all four of the above biofuel categories. EPA is also proposing to address the remand of the 2016 standard-setting rulemaking, as well as several regulatory changes to the Renewable Fuel Standard (RFS) program including regulations for the use of biointermediates to produce qualifying renewable fuel, flexibilities for regulated parties, clarifications of existing regulations, and an extension of certain RFS compliance and attest engagement reporting deadlines. The RFS Annual Rules proposal was signed on December 7, 2021, and will be published separately in the **Federal Register** on a later date. The pre-publication version is available at <https://www.epa.gov/renewable-fuel-standard-program/proposed-volume-standards-2020-2021-and-2022>.

*Participation in virtual public hearing.* Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current Centers for Disease Control and Prevention (CDC) recommendations, as well as state and local orders for social distancing to limit the spread of COVID-19, EPA cannot hold in-person public meetings at this time.

Information on how to register for the hearing can be found at <https://www.epa.gov/renewable-fuel-standard-program/public-hearing-information-proposed-renewable-fuel-standards-2020>. The last day to pre-register to speak at the hearing will be December 20, 2021.

Each commenter will have 3 minutes to provide oral testimony. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/renewable-fuel-standard-program/public-hearing-information-proposed-renewable-fuel-standards-2020>. While EPA expects the hearing to go forward as set forth above, please monitor the website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by December 20, 2021. EPA may not be able to arrange accommodations without advance notice.

*How can I get copies of the proposed action and other related information?* EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2021-0324. EPA has also developed a website for the RFS program, including the proposal, which is available at <https://www.epa.gov/renewable-fuel-standard-program>. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

**William Charmley,**

*Director, Assessment and Standards Division,  
Office of Transportation and Air Quality,  
Office of Air and Radiation.*

[FR Doc. 2021-26821 Filed 12-9-21; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[WC Docket No. 12-375, DA 21-1422; FR 58958]

#### Wireline Competition Bureau Seeks Comment on Securus Technologies, LLC's Petition for Waiver of the Inmate Calling Services Per-Minute Rate Requirement

**AGENCY:** Federal Communications Commission.

**ACTION:** Solicitation of Comments.

**SUMMARY:** The Wireline Competition Bureau seeks comment on a petition filed by Securus Technologies, LLC asking the Commission to waive certain sections of its regulations, which require interstate and international inmate calling services calls to be charged to customers only on a per-minute basis.

**DATES:** Comments are due January 7, 2021, and Reply comments are due January 21, 2022.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 12-375, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

**FOR FURTHER INFORMATION CONTACT:**

Katherine Morehead, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418-0696 or via email at [katherine.morehead@fcc.gov](mailto:katherine.morehead@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the FCC's Public Notice, DA 21-1422, released November 12, 2021. The full text of this Public Notice is available at <https://docs.fcc.gov/public/attachments/DA-21-1422A1.pdf>. The full text of the Securus Petition is available at: <https://ecfsapi.fcc.gov/file/10830227993038/Subscription%20Plan%20Waiver%20Petition.PDF>.

The Wireline Competition Bureau (Bureau) seeks comment on a petition filed by Securus Technologies, LLC asking the Commission to waive sections 64.6030, 64.6080, and 64.6090 of its rules, which require inmate calling services (ICS) calls to be charged to customers on a per-minute basis.

According to the Petition, Securus began piloting subscription plans for intrastate calls in 2020 and now offers these plans at eight correctional facilities. Under these plans, "subscribers pay a flat monthly fee for up to 100 calls per month or 25 calls per week." Securus asserts that its subscription plan pilot program is in jeopardy because it "cannot definitively determine if a call is intrastate when a subscription plan call is made" since many of the calls are "made to wireless phones whose exact physical location is difficult to determine." Thus, Securus claims that it must "treat potentially in-state but [jurisdictionally] indeterminate calls as interstate calls whose rates are limited to per-minute charges, jeopardizing the development and availability of flat-rate subscription plans for multiple calls."

Worth Rises filed a response to the Securus Petition. Worth Rises argues that "Securus has not provided sufficient data in its waiver request for the Commission to determine the true per-minute rate range offered through its subscription packages and whether they generally conform to the Commission's rate caps." Worth Rises identifies four principal concerns with Securus's subscription plans as described in the Petition—call length and usage data, dropped calls, unused calls, and renewals. Worth Rises suggests that the Commission should also require

additional information from Securus before considering the waiver, including information on the policies related to the subscription programs and the "cost basis of the pilot subscription packages by pilot location." Worth Rises requests that if the Commission grants the Petition, it should require Securus to base its subscription plans on minutes rather than calls, "limit Securus to selling packages of usage (e.g., 250 minutes) or time (e.g., unlimited monthly), but not both," and "prevent automatic subscription renewals or require easily accessible termination options."

The Bureau seeks comment on the Securus Petition. The Bureau also seeks comment on the additional information and data Worth Rises suggests the Commission should require before considering the Securus waiver request. Additionally, the Bureau seeks comment on the concerns Worth Rises raises regarding the Securus pilot subscription programs, including concerns relating to call length and usage, dropped and unused calls, subscription renewals, and the methods used to share initial disclosures and other subscription plan policies with customers.

*Filing of Comments and Replies.*

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 7, 2022 and reply comments on or before January 21, 2022. Comments may be filed using the Commission's Electronic Comment Filing System. See FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). The Protective Order issued in this proceeding permits parties to designate certain material as confidential. Filings which contain confidential information should be appropriately redacted and filed pursuant to the procedure described therein.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the 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. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the

Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission.

*People with Disabilities.* The Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

*Ex Parte Presentations.* 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 presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the 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. Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

**Additional Information.** For further information on this Notice, please contact Katherine Morehead, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418-0696 or via email at [katherine.morehead@fcc.gov](mailto:katherine.morehead@fcc.gov).

Federal Communications Commission.

**Pamela Arluk,**

*Division Chief, Wireline Competition Bureau.*

[FR Doc. 2021-26586 Filed 12-9-21; 8:45 am]

**BILLING CODE 6712-01-P**

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## DEPARTMENT OF HOMELAND SECURITY

### 48 CFR Parts 3001, 3002, 3024 and 3052

[Docket No. DHS-2017-0008]

RIN 1601-AA79

#### Withdrawal of Proposed Revision to Department Homeland Security Acquisition Regulation (HSAR); Privacy Training (HSAR Case 2015-003)

**AGENCY:** Office of the Chief Procurement Officer, Department of Homeland Security (DHS).

**ACTION:** Notice of withdrawal of proposed rule.

**SUMMARY:** DHS is withdrawing a proposed rule titled Privacy Training (HSAR Case 2015-003) and providing notice of its cancellation. The Notice of Proposed Rulemaking proposed to amend the HSAR to require contractor and subcontractor employees to complete Privacy training before accessing a Government system of records; handling Personally Identifiable Information (PII) and/or Sensitive Personally Identifiable Information; or designing, developing, maintaining, or operating a Government system of records. DHS is withdrawing this proposed rule because the content of this proposal was addressed in a final rule issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council and resultant DHS FAR Class Deviation Number 17-03, Implementation of FAR

52.224-3 Privacy Training—Alternate I. Thus, DHS will not take any further action on this proposal.

**DATES:** The proposed rule published on January 19, 2017 (82 FR 6425) and the comment period extended to March 20, 2017 (82 FR 14341), is withdrawn effective December 10, 2021.

**ADDRESSES:** Mail: Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, ATTN: Candace Lightfoot, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** Ms. Candace Lightfoot, Procurement Analyst, DHS, Office of the Chief Procurement Officer, Acquisition Policy and Legislation at (202) 447-0882 or email [HSAR@hq.dhs.gov](mailto:HSAR@hq.dhs.gov). When using email, include HSAR Case 2015-003 in the "Subject" line.

**SUPPLEMENTARY INFORMATION:** On January 19, 2017, DHS published a proposed rule at 82 FR 6425 titled Privacy Training (HSAR Case 2015-003). The rule proposed to amend the HSAR to require contractor and subcontractor employees to complete Privacy training before (1) accessing a Government system of records; (2) handling Personally Identifiable Information and/or Sensitive Personally Identifiable Information; or (3) designing, developing, maintaining, or operating a Government system of records.

DHS received two public comments in response to this proposed rule. One commenter stated support for the requirements in the proposed rule. The other commenter:

- Showed support for DHS making available on a public website a DHS-developed privacy training module that contractors can provide to their employees to achieve compliance with the proposed requirements. However, recommended that certain contractors may desire to develop their own internal Privacy Act training that would be compatible with DHS's rules and their own corporate policies, procedures, and training;

- Recommended that DHS add the Privacy Act's definition of a "system of records" to increase understanding by both government and contractor personnel about when the clause and the training are required;

- Recommended requiring flow down of HSAR 3052.224-7X only to subcontractors with a statement of work that triggers the training requirement;

- Recommended that DHS further clarify the requirement to maintain training certificates and leverage

electronic recordkeeping when available; and

- Recommended that DHS modify the proposed rule to clarify whether older training certificates must be maintained after submittal and, if so, recommends that DHS specifically identify the retention period.

On December 20, 2016, DoD, GSA, and NASA<sup>1</sup> issued a final rule at 81 FR 93476 titled Privacy Training, which amended the Federal Acquisition Regulation (FAR), effective on January 19, 2017. Upon further review, DHS believes that the FAR rule addressed issues raised by this commenter.

DHS is withdrawing the proposed rule (82 FR 6425) and will not proceed with finalization of the rule because all of the requirements in the proposed rule are now covered under the final FAR rule (81 FR 93476) and resultant DHS FAR Class Deviation Number 17-03, Implementation of FAR 52.224-3 Privacy Training—Alternate I. The final FAR rule (81 FR 93476) provides guidance to contractors regarding the requirement to complete training that addresses the protection of privacy in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, as amended, and the handling and safeguarding of PII. Under this rule, contractors are responsible for ensuring that initial privacy training, and annual privacy training thereafter, is completed by contractor employees who have access to a system of records; create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or design, develop, maintain, or operate a system of records. A contractor who has employees involved in these activities is also required to maintain records indicating that its employees have completed the requisite training and provide these records to the contracting officer upon request. In addition, the prime contractor is required to flow-down these requirements to all applicable subcontracts. As a result of the FAR change and DHS FAR Class Deviation Number 17-03, the rationale for the proposed rule no longer exists and this proposal is withdrawn.

Dated: December 7, 2021.

**Paul Courtney,**

*Chief Procurement Officer, Department of Homeland Security.*

[FR Doc. 2021-26754 Filed 12-9-21; 8:45 am]

**BILLING CODE P**

<sup>1</sup> Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council.

# Notices

Federal Register

Vol. 86, No. 235

Friday, December 10, 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

### Submission for OMB Review; Comment Request

December 7, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 10, 2022 will be considered. 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 <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

### Rural Housing Service

*Title:* 7 CFR 1944–I, "Self-Help Technical Assistance Grants."

*OMB Control Number:* 0575–0043.

*Summary of Collection:* Authorized under Public Law 90–448, section 523 of the Title 5 Housing Act of 1949, this regulation sets forth the policies and procedures and delegates the authority for providing technical assistance funds to eligible applicants to finance programs of technical and supervisory assistance for the Mutual and Self-Help Housing (MSH) program. The MSH program affords very low and low-income families the opportunity for home ownership by constructing their own homes. The MSH program provides funds to non-profit organizations for supervisory and technical assistance to the homebuilding families. Three types of funds are available under the MSH program: (1) Technical assistance grants, (2) Pre-development grants and (3) Site option loans.

*Need and Use of the Information:* Rural Housing Service (RHS) will collect information from non-profit organizations that want to develop a MSH program in their area to increase the availability of affordable housing. The information is collected at the local, district and state levels. The information requested by RHS includes financial and organizational information about the non-profit organization. RHS needs this information to determine if the organization is capable of successfully carrying out the requirements of the MSH program. The information is collected on an as requested or needed basis. RHS has reviewed the program's need for the collection of information versus the burden placed on the public.

*Description of Respondents:* Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 70.

*Frequency of Responses:* Recordkeeping; Reporting: Annually.

*Total Burden Hours:* 2,380.

**Levi S. Harrell,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2021–26759 Filed 12–9–21; 8:45 am]

**BILLING CODE 3410–XV–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 10, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* National Poultry Improvement Plan (NPIP).

*OMB Control Number:* 0579–0007.

*Summary of Collection:* The National Poultry Improvement Plan (NPIP) is a voluntary Federal-State-industry program for controlling certain poultry

diseases and for improving poultry breeding flocks and products through disease control techniques. It is authorized by the USDA Organic Act of 1944, as amended (7 U.S.C. 429) and the cooperative work is carried out through memoranda of understanding with the participating States. Specific NPIP provisions are contained in Title 9, Parts 56, 145, 146, and 147 of the *Code of Federal Regulations*. The Veterinary Services (VS) unit of USDA's Animal and Plant Health Inspection Service (APHIS) administers these regulations.

**Need and Use of the Information:** APHIS will collect information using several information collection activities to continually improve the health of the U.S. poultry population and the quality of U.S. poultry products. If the information were collected less frequently or not collected, APHIS could not affectively monitor the health of the nation's poultry population.

**Description of Respondents:** Business or other for-profit; State, Local or Tribal Government; Individuals or households.

**Number of Respondents:** 2,867.

**Frequency of Responses:** Recordkeeping; Reporting: On occasion.

**Total Burden Hours:** 111,339.

Dated: December 7, 2021.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2021-26823 Filed 12-9-21; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

December 7, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 10, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal Plant and Health Inspection Service

**Title:** Control and Eradication of African Swine Fever; Conditions for Payment of Indemnity Claims.

**OMB Control Number:** 0579-New.

**Summary of Collection:** The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict import or export of any animal or related material if required to prevent the spread of any livestock or poultry pest or disease. The AHPA is contained in Title X, Subtitle E, Sections 10401-18 of Public Law 107-171, May 13, 2002, the Farm Security and Rural Investment Act of 2002; 7 U.S.C. 8301, *et seq.*

Part of the mission of the Veterinary Services (VS) business unit of the Animal and Plant Health Inspection Service (APHIS) is preventing foreign animal disease outbreaks in the United States, and monitoring, controlling, and eliminating a disease outbreak should one occur. In the past several years, there have been significant worldwide outbreaks of African swine fever (ASF) and the USDA is committed to working with State and industry partners to keep the virus out of the United States and its territories.

**Need and Use of the Information:** VS or State personnel, as part of incident management team operations, will collect from herd owners or growers of ASF presumptive positive or positive premises information needed to reimburse the owners or growers for the

value of any animals taken and develop a plan for virus elimination so the owner or grower can return to normal business operations.

If the information were conducted less frequently or not at all, APHIS would not be able to develop disease mitigation plans or properly reimburse producers and herd owners for their lost inventory.

**Description of Respondents:**

Businesses or other for-profit; State, Local, and Tribal governments.

**Number of Respondents:** 40,050.

**Frequency of Responses:** Reporting: On occasion.

**Total Burden Hours:** 2,538,300.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2021-26830 Filed 12-9-21; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

December 6, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 10, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information

unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Rural Business-Cooperative Service

*Title:* Rural Innovation Stronger Economy Grant Program (RISE).

*OMB Control Number:* 0570-0075.

*Summary of Collection:* Section 6424 of the Agriculture Improvement Act of 2018 (Farm Bill), Public Law 115-334, amended Subtitle D of the Consolidated Farm and Rural Development Act (the "Act," 7 U.S.C. 2009cc) by adding the "Rural Innovation Stronger Economy Grant Program" ("RISE") to be established by the Secretary of the U.S. Department of Agriculture (USDA).

The purpose of the RISE program is to create and enhance jobs and support industry clusters in low-income rural areas. This is achieved through grants awarded to a rural jobs accelerator partnerships consisting of non-profit entities, Tribal entities, institutions of higher education and public bodies with expertise in delivering economic and job training programs. RISE grant funds can be used to build or support a business incubator facility, provide worker training to assist in either the creation of new jobs, upskilling the present work force to a high-wage job, or developing a base of skilled workers that will enhance the opportunities to enter a high-wage job within existing industry segments in the region.

*Need and Use of the Information:* The information provided will be used to determine applicant and project eligibility and to ensure that projects meet program goals and that funds will be used for authorized purposes.

Additionally, Partnerships that receive RISE grant funding are required to provide financial and program reports to ensure that the project is progressing, and that funds continue to be used for authorized purposes.

*Description of Respondents:* State, Local, and Tribal Government.

*Number of Respondents:* 30.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 917.

**Levi S. Harrell,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2021-26701 Filed 12-9-21; 8:45 am]

BILLING CODE 3410-XY-P

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

[Docket ID FSA-2021-0016]

#### Information Collection Request; Market Facilitation Program (MFP) Payments to Producers

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Notice; request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act, Farm Service Agency (FSA) is requesting comments from interested individuals and organizations on an extension of a currently approved information collection request associated with Market Facilitation Program (MFP). FSA, on the behalf of the Commodity Credit Corporation, is making payments to domestic crop and commodity producers. FSA is authorized to assist in the disposition of surplus commodities and to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

**DATES:** We will consider comments that we receive by February 8, 2022.

**ADDRESSES:** We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to: [www.regulations.gov](http://www.regulations.gov) and search for Docket ID FSA-2021-0016. Follow the online instructions for submitting comments.

- *Mail, Hand-Delivery, or Courier:* Director, Safety Net Division, FSA, USDA, 1400 Independence Avenue SW, Stop 0510, Washington, DC 20250-0522.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Kelly Hereth.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activity, contact Kelly Hereth; telephone: (202) 720-0448; or email: [kelly.hereth@usda.gov](mailto:kelly.hereth@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 or (844) 433-2774 (toll-free nationwide).

**SUPPLEMENTARY INFORMATION:**

*Title:* Market Facilitation Program (MFP) Payments to Producers.

*OMB Control Number:* 0560-0292.

*OMB Expiration Date:* 04/30/2022.

*Type of Request:* Extension.

*Abstract:* FSA, on the behalf of the Commodity Credit Corporation, is managing the MFP information collection activities, as specified in the 7 CFR part 1409, to provide eligible producers payments with respect to commodities that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. The information collection is necessary to evaluate the application and other required paperwork for determining the producer's eligibilities and assist in producer's payment calculations. The information collection is being extended to continue the OMB approval for any additional information that may be needed until their payment process is fully completed.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Public reporting burden for this information collection is estimated 0.745 hours to include the time for reviewing instructions, searching existing data sources, gathering, and maintaining data needed and completing and reviewing the collections of information.

*Type of Respondents:* Producers or farmers.

*Estimated Annual Number of Respondents:* 898,600.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Responses:* 898,600.

*Estimated Average Time per Response:* 0.745 hours.

*Estimated Total Annual Burden on Respondents:* 669,850.

FSA is requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including using

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

**Zach Ducheneaux,**

*Administrator, Farm Service Agency.*

[FR Doc. 2021-26708 Filed 12-9-21; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

[Docket No. RHS-21-MFH-0013]

#### Multi-Family Housing Non-Profit Transfer Technical Assistance Grants

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice of Funding Availability (NOFA).

**SUMMARY:** The Rural Housing Service (RHS), a Rural Development agency (Agency) of the United States Department of Agriculture (USDA), announces the availability of \$3 million and the timeframe to submit applications for Multi-Family Housing Non-Profit Transfer Technical Assistance (MFHNPTA) Grants program from qualified nonprofits (NP) and public housing authorities (PHA) to provide technical assistance to RHS Multi-Family Housing (MFH) borrowers and applicants to facilitate the acquisition of Section 515 properties by NPs and PHAs.

**DATES:** The closing deadline for receipt of all applications in response to this NOFA is 11:59 p.m., Eastern Daylight Time on February 8, 2022. See the

**SUPPLEMENTARY INFORMATION** section for additional information.

**ADDRESSES:** Applications in response to this NOFA must be submitted electronically to the CloudVault.

Specific instructions on how to submit applications electronically are provided below within this Notice under the **SUPPLEMENTARY INFORMATION** section and can also be viewed at: <https://www.grants.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Vergin, Preservation and Production Division, Multi-Family Housing, at (651) 602-7820 (this is not a toll-free number) or via email: [stephanie.vergin@usda.gov](mailto:stephanie.vergin@usda.gov).

**SUPPLEMENTARY INFORMATION:**

#### Authority

This NOFA is authorized pursuant to Section 749 of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141), Section 746 of the Consolidated Appropriations Act, 2019 (Pub. L. 116-6), and Section 764 of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94).

#### Overview Information

*Federal Agency Name:* Rural Housing Service.

*Funding Opportunity Title:* Notice of Funding Availability for the Multi-Family Housing Non-Profit Transfer Technical Assistance (MFHNPTA) Grants for Fiscal Year (FY) 2022.

*Announcement Type:* Initial Announcement.

*Assistance Listing Number (ALN)* 10.494. (formerly Catalog of Federal Domestic Assistance (CFDA).

*Dates:* The deadline for receipt of all applications in response to this NOFA is 11:59 p.m., Eastern Daylight Time, on February 8, 2022.

*Submissions:* Applications must be submitted electronically to CloudVault. Applications must be received by the closing deadline.

The process for submitting an electronic application to the Agency via CloudVault is as follows:

At least three business days prior to the application deadline for the applicable funding round, the applicant must email the Agency a request to create a shared folder in CloudVault. The email must be sent to the following address: [npta.rfp@usda.gov](mailto:npta.rfp@usda.gov). The email must contain the following information:

- *Subject line:* Non-Profit Technical Assistance NOFA Submission.
- *Body of email:* Applicant Name and Applicant Contact Information.
- *Request language:* "Please create a shared CloudVault folder so that we may submit our application documents."

Once the email request to create a shared CloudVault folder has been received, a shared folder will be created within two business days. When the shared CloudVault folder is created by the Agency, the system will automatically send an email to the applicant's submission email with a link to the shared folder. All required application documents in accordance with this NOFA must be loaded into the shared CloudVault folder. When the submission deadline is reached, the applicant's access to the shared CloudVault folder will be removed. Any document uploaded to the shared CloudVault folder after the application deadline will not be reviewed or considered.

The applicant should upload a Table of Contents of all the documents that have been uploaded to the shared CloudVault folder. Last-minute requests and submissions may not allow adequate time for the submission process to take place prior to the deadline. Applicants are reminded that all submissions must be submitted electronically via CloudVault and received by the deadline.

Documents received after the deadline will not be evaluated. Upon request, the Agency will provide the responding entities with a written acknowledgement of receipt.

#### A. Funding Opportunity Description

The technical assistance (TA) grants offered under this NOFA are for the purpose of facilitating the transfer and preservation of existing Rural Rental Housing properties under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. 1485). Agency regulations for the Section 515 program are published at 7 CFR part 3560.

Applications must demonstrate the responding entity's experience and expertise in the acquisition and rehabilitation of affordable MFH properties and their capacity to provide advisory services in affordable housing. Responding entities may submit applications to serve a single-state or multi-state area.

#### B. Award Information

The Agency will evaluate and score the grant applications according to the criteria set forth in this NOFA. The maximum award per funded application will be \$350,000.

The Agency was granted authority for this pilot program under Section 749 of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141); Section 746 of the Consolidated Appropriations Act, 2019 (Pub. L. 116-6); and Section 764 of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94). In addition, the Agency is authorized to utilize the appropriations from each fiscal year for a total appropriation of \$3 million to provide grants to qualified NPs and PHAs who will then provide technical assistance, including financial and legal services, to MFH borrowers to facilitate the acquisition of Section 515 MFH properties by NPs and PHAs. These grants will be provided in areas where the USDA Secretary determines there is a risk of loss of affordable housing to keep such properties in the MFH program. Risk of loss of affordable housing may be driven by market conditions or may be due to property-specific factors, including mortgages

reaching maturity, owner ability to prepay existing Agency loans, poor physical condition of the property, or failing ownership. Funds that are not obligated to initial awardees by May 1, 2022, may be awarded to other NP and/or PHA applicants waiting for the TA grants based on scoring set forth in this NOFA.

When selecting a grantee, the Agency may request changes to the Scope of Work (SOW). See Section D of this NOFA. Grantees must execute a Grant Agreement that will incorporate a SOW agreed to by the Agency. If the selected grantee does not accept the terms of the Agency and/or does not deliver an executed Grant Agreement within ten business days after receiving the Grant Agreement with the agreed upon SOW, the Agency may choose to rescind the award and select another grantee without further notice.

The grant term is 24 months with an extension allowed up to an additional 12 months at the Agency's discretion.

Grant funds are available for obligation through July 1, 2022. The grant term will be defined in the Grant Agreement and will become effective once signed by the grantee and the Agency.

### C. Eligibility Information

Eligibility for grants under this NOFA is limited to NPs and PHAs meeting the requirements specified in this Notice.

NPs must meet the definition of nonprofit organization in 7 CFR part 3560. Qualified NPs and PHAs include tribally designated housing entities (TDHE) and tribal housing NPs.

#### 1. Expertise and Capacity.

Eligible grantees must have the knowledge, ability, technical expertise, practical experience, and capacity necessary to develop and package Section 515 property transfer transactions. They must also demonstrate the ability to provide technical assistance to NPs and/or PHAs to facilitate their acquisition of Section 515 properties. In addition, all eligible grantees must demonstrate the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a cost-efficient and timely manner within the 24-month grant term. Eligible grantees will include a proposed SOW (see Section D of this NOFA) which will be evaluated as part of the application.

#### 2. Organization Status.

Responding entities must document each of the following in their response:

- Status (*i.e.*, Articles of Incorporation) as a NP and/or PHA.

- Good standing within the state in which the entity is organized.

- Legal authority to provide services stated in the application under the applicable laws for the state(s) in which operation is proposed. Examples of acceptable documentation include but are not limited to bylaws, organizational charters, and statutes or regulations.

- No current or unresolved default or violation of any other federal, state, or local grant or loan agreement(s).

- Experience in providing technical assistance for Section 515 MFH affordable housing (describe in the SOW).

The requirements above will also apply to any entity performing services on behalf of the respondent.

### D. Scope of Work

Responding entities must submit a detailed SOW that includes the following requirements:

- Introduction/overview with a description of the proposed plan to provide technical assistance to NPs and PHAs in the acquisition of Section 515 properties within the prescribed 24-month grant term.

- The organization's capabilities to execute the proposed plan within the prescribed 24-month grant term, focusing on the elements described in Section C. 1. of this NOFA.

- The organization's plan to identify potential sellers of Section 515 properties.

- The organization's plan to identify and provide services to NPs and PHAs interested in acquiring these properties.

- Types of proposed technical assistance and legal and/or financial services that will enable NPs and/or PHAs to submit successful transfer applications to the Agency within the prescribed 24-month grant term. Clearly explain the services to be provided directly by your organization and all services that will be provided by third-parties. See Section F.5.b. of this NOFA for additional information.

- The organization's experience in identifying and successfully assisting entities in the acquisition, repair, and rehabilitation of Section 515 MFH properties.

- Grant funds usage projection that corresponds with a 24-month timeline for service delivery and illustrates direct and indirect administrative costs in dollars, and as a percentage of the technical assistance services provided. See Section E of this NOFA for more information regarding eligible costs.

- Any other strength and/or capability not included above that you believe qualifies the organization to deliver services under this grant.

### E. Eligible Purposes

Entities responding to this NOFA are required to provide technical assistance to NPs and/or PHAs acquiring Section 515 projects to increase the TA recipients capacity (knowledge, skills, and ability) in, but not limited to, the following areas: Locating potential Section 515 properties for transfer; completing the transfer analysis, negotiation, application, underwriting, and closing processes; and identifying and securing funding from the Agency and/or other sources for the purpose of acquisition, repair and/or rehabilitation. Costs will be limited to those allowed under 2 CFR part 200.

Eligible purposes/costs may include soft costs such as financial analysis, transaction structuring analysis and completion of other transaction details such as Capital Needs Assessments, appraisals, and market surveys or other consultation, advisory and non-construction services required as part of the application process. Ineligible purposes/costs include building materials, labor costs or expenditures otherwise typically included as any hard costs for actual construction or repairs, prepayment, interest, or principal payments.

Grant funds cannot be used by the grantee for activities that are not directly related to specific transactions (such as outreach, conferences, provider personnel education/training, etc.).

Grant funds cannot be used by the grantee for activities or transactions in which they have any direct or indirect ownership interest (regardless of whether it is an interest as a current or prospective owner).

### F. Application and Submission Information

All materials must be submitted via *CloudVault*.

#### 1. Summary.

The application must include a summary page listing the following items:

- Responding entity's name,
- Responding entity's Taxpayer Identification Number,
- Responding entity's address,
- Responding entity's telephone number,
- Responding entity's contact person's name, telephone number, and address,
- Amount of grant requested,
- The state or states for which the application is submitted, and
- Responding entity's Dun and Bradstreet Data Universal Numbering System (DUNS) number, registration in the System for Award Management

(SAM) prior to submitting an application pursuant to 2 CFR 25.200(b), and other supporting information to substantiate their legal authority and good standing. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at (866) 705-5711 or via the internet at <https://www.dnb.com/>. Additional information concerning this requirement can be obtained at <https://www.grants.gov>. All applicants must be registered in SAM prior to submitting an application, unless determined exempt under 2 CFR 25.110 by the Agency. A Federal award recipient must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM. Similarly, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170, so long as an entity respondent does not have an exception under 2 CFR 170.110(b), the grantee must have the necessary processes and systems in place to comply with the reporting requirements should the responding entity receive funding. See 2 CFR 170.200(b).

2. *Form SF 424, "Application for Federal Assistance."*

3. *Felonies and Federal Tax Delinquencies.*

Awards made under this NOFA are subject to the provisions contained in the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) Division E, Sections 745 and 746 regarding felony convictions and corporate Federal tax delinquencies. To comply with these provisions, applicants that are, or propose to be, corporations will submit form AD-3030, "Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants," as part of their application. Form AD-3030 can be found at: <https://www.ocio.usda.gov/document/ad3030>.

4. *Organizational and Financial Status.*

The responding entity must include organizational status documents reflecting the criteria in Section C 2. of this NOFA, as well as financial statements, to show evidence of the responding entity's status as a properly organized private or public NP, or PHA, and its financial ability to carry out the objectives of the grant program. If other

entities will be working on behalf of the grantee, current working agreements between the respondent and those entities must be submitted as part of the application and any associated cost must be included in the responding entity's budget.

The responding entity must also disclose all MFH Section 515 projects in which the respondent and or its third-party affiliates have a direct or indirect ownership interest.

5. *Organizational Expertise and Experience.*

The responding entity must provide a capabilities statement describing the respondent's qualifications under Section C. 1 to provide technical assistance on Section 515 transfers and loan applications.

a. *Narrative.*

The responding entity must include a narrative describing its knowledge, demonstrated ability, and practical experience in completing transfers of Section 515 properties and/or providing training and technical assistance to NPs and PHAs for the transfer and rehabilitation of Section 515 properties. If the responding entity intends to have other entities working on its behalf, the narrative must identify those entities and address their ability to meet the stated eligibility requirements and experience in delivering approved technical assistance services. Applicants must identify Section 515 transfer transactions completed by the applicant and/or organizations to whom the responding entity and/or other entity working on its behalf has provided technical assistance on applications for the transfer of Section 515 projects in the last five years. For the projects and applications above, the applicant must provide the Section 515 property name and location (city and state), technical assistance recipient organizational name and location (city and state), source of technical assistance funding, and outcome of the transaction (*i.e.*, no ownership change, transaction in process, transfer completed).

The responding entity must specify the states and/or service areas in which they will offer technical assistance services and the states and/or service areas in which any proposed third-party contractors/subrecipients will offer technical assistance services.

Respondents must specify why each targeted service area and/or property is at risk of loss of affordable housing.

b. *Key Personnel and Staffing Plan.*

Applications must include the resumes of the key staff personnel that will perform the following functions: (1) Delivery of technical assistance and (2) administration of the grant. (CNAs,

appraisals, and market surveys are not considered to be key personnel services). Describe each individual's ability to perform the proposed activities and/or past experience in successfully managing service delivery of TA grants. Include a staffing chart complete with name, job title, salary, hours, timelines, and descriptions of employee duties to achieve the objectives of the grant program.

c. *Consulting Services.*

The Agency's goal is to increase the capacity of NP and PHA staff to directly deliver technical assistance services to recipients. To support this goal, the Agency is limiting the use of contractors for the delivery of technical assistance services to a maximum of 10% of the grantee's key personnel services budget. If the respondent intends to contract key personnel services from outside its organization (not to exceed the 10% limit), a plan must be outlined to address how the outside entities working on the applicant's behalf will deliver key personnel services in each targeted geographic area specified. Moreover, a resume, hourly contract rate, and description of the contractor duties aimed at achieving the grant objectives must be provided for each proposed third-party contractor/subrecipient.

6. *Scope of Work.*

Applications must include a detailed SOW covering a 24-month period (see Section D of this NOFA).

7. *Scoring Criteria Worksheet.*

Applications must include a separate one-page information sheet listing each of the "Scoring Criteria" contained in Section G of this NOFA, followed by the page numbers of all relevant material and documentation contained in the application to support these criteria.

## G. Scoring Criteria

Only those respondents deemed qualified under Sections C and F of this NOFA will be scored under this section. The review process designed for this NOFA will evaluate the degree to which the application sets forth measurable realistic objectives that are consistent with this NOFA and can be completed within a 24-month grant term consistent with the application and processing guidance established by Agency transfer regulations.

Selection points will be awarded as follows:

1. *Applicant Experience (RHS Section 515).*

a. Applicant has successful, verifiable experience completing Section 515 transfers during the past five years. To receive points, transfers must be completed or there must be a submitted

transfer application currently pending approval and/or closing with the Agency:

- 1–2 Section 515 project transfers: 10 points
- 3–5 Section 515 project transfers: 20 points
- 6–8 Section 515 project transfers: 30 points
- 9 or more Section 515 project transfers: 40 points

b. Applicant has successful, verifiable experience providing technical assistance that has increased the capacity of NPs and/or PHAs to complete Section 515 transfers. The number of NP and/or PHA clients to whom the respondent has provided Section 515 technical assistance during the past five years:

- 1–4 Section 515 technical assistance clients: 10 points
- 5–8 Section 515 technical assistance clients: 20 points
- 9 or more Section 515 technical assistance clients: 30 points

#### 2. Applicant Experience (Other Affordable Multi-Family Housing Programs).

a. Applicant has successful, verifiable experience completing affordable MFH project transfers during the past five years. To receive points, projects must have been completed or have at a minimum obtained funding approval:

- 1–2 affordable housing project transfers: 5 points
- 3–5 affordable housing project transfers: 10 points
- 6–8 affordable housing project transfers: 15 points
- 9 or more affordable housing project transfers: 20 points

b. Applicant has successful, verifiable experience providing technical assistance that has increased the capacity of NPs and/or PHAs to complete affordable MFH project transfers. The number of NP and/or PHA clients to whom the respondent has provided affordable MFH project technical assistance during the past five years:

- 1–4 affordable housing project clients: 5 points
- 5–8 affordable housing project clients: 10 points
- 9 or more affordable housing project clients: 15 points

#### 3. Proposed Outcomes.

a. Applicant uses technical assistance resources to maximize the number of Section 515 projects assisted with grant funding. Scoring is based on the project plan in Section D: Scope of Work. Number of projects assisted under the grant:

- 1–5 projects: 5 points
  - 6–10 projects: 10 points
  - 11 or more projects: 15 points
- b. Applicant uses technical assistance resources to increase the capacity of NPs and PHAs to complete transfers of Section 515 properties. Scoring is based on the project plan in Section D: Scope of Work. Number of NPs or PHAs served under the grant:
- 1–3 NPs/PHAs: 5 points
  - 4–6 NPs/PHAs: 10 points
  - 7 or more NPs/PHAs: 15 points

#### 4. Grant Administration

a. Applicant uses grant resources to maximize the funding available for direct program delivery to TA recipients. Administrative costs as a percentage of grant funds used:

- 10% to 19%: 5 points
- Less than 10%: 10 points

b. Applicant has successful, verifiable experience managing service delivery or technical assistance through the grant lifecycle (including submitting timely requests for funding, meeting reporting requirements, and closing out awards) during the past five years:

- 1–4 grants: 5 points
- 5 or more grants: 10 points

Applicants must score a minimum of 35 total points in Sections G. 1 and 2 and 55 total points in Sections G. 1, 2, 3 and 4 to be eligible for funding.

5. Multi-Family Housing Program Delivery Goals. Applicants that meet the minimum scoring requirements may be eligible for up to 15 points to support MFH program delivery goals.

a. Geographic coverage (up to 10 points): The applicant proposes to serve a geographic area that is underserved by other technical assistance providers areas or proposes to serve areas with a significant number of properties in need of preservation.

b. TA service delivery models (up to 5 points): The applicant proposes a TA service delivery model that is different from other proposed models. The agency seeks to test a range of TA delivery models to assess the methods of TA delivery that are most effective to facilitate preservation.

6. Administrator Discretionary Points: Applicants that meet the minimum scoring requirements may be considered for up to 15 discretionary scoring points (5 points for each category) as determined by the Administrator, which advance any or all of the Agency's three key funding priorities, provided that all other requirements set forth in this notice are otherwise met. The three key priorities are:

(i) COVID–19 Impacts (up to 5 points): Priority points may be awarded if the

project is located in or serving one of the top 10% of counties or county equivalents based upon county risk score in the United States. Information on whether your project qualifies for priority points can be found at the following website: <https://www.rd.usda.gov/priority-points>.

(ii) Equity (up to 5 points): Priority points may be awarded if the project is located in or serving a community with score 0.75 or above on the CDC Social Vulnerability Index. Information on whether your project qualifies for priority points can be found at the following website: <https://www.rd.usda.gov/priority-points>.

(iii) Climate Impacts (up to 5 points): Priority points may be awarded if the project is located in or serving coal, oil and gas, and power plant communities whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. Information on whether your project qualifies for priority points can be found at the following website: <https://www.rd.usda.gov/priority-points>.

Final scores are determined by the Agency. Meeting the minimum scoring requirements and/or receiving discretionary points from the Administrator does not guarantee a funding award.

The Agency will notify all responding entities whether their application has been accepted or rejected and provide appeal rights under 7 CFR part 11, as appropriate.

#### H. Federal Award Administration Information

1. Federal Award Notices. The Agency will notify, in writing, applicants whose applications have been selected for funding. At the time of notification, the Agency will advise the applicant what further information and documentation is required along with a timeline for submitting the additional information. If the Agency determines it is unable to select the application for funding, the applicant will be informed in writing. Such notification will include the reasons the applicant was not selected. The Agency will advise applicants, whose applications did not meet eligibility and/or selection criteria, of their review rights or appeal rights in accordance with 7 CFR part 11.

2. Administrative and National Policy Requirements. The Agency is encouraging applications for projects that will support rural areas with persistent poverty. This emphasis will support the Agency's mission of improving the quality of life for Rural Americans and commitment to directing resources to those who most need them.



(a) The following additional requirements apply to grantees selected for this program:

(1) Complete Form RD 1942–46

“Letter of Intent to Meet Conditions.”

(2) Complete Form RD 1940–1, “Request for Obligations of Funds.”

(3) Complete FMMI Vendor Code Request Form.

(4) Provide a copy of the organization’s Negotiated Indirect Cost Rate Agreement.

(5) Certify that all work completed for the award will benefit a rural area.

(6) Certify that the applicant will comply with the Federal Funding Accountability and Transparency Act of 2006 and report information about subawards and executive compensation.

(7) Certify that the U.S. has not obtained an outstanding judgment against the organization in a Federal Court (other than in the United States Tax Court).

(8) Execute Form SF–424B, “Assurance—Non-Construction Programs.”

(9) Execute Form SF–LLL, “Disclosure Form to Report Lobbying,” if applicable or certify that the organization does not lobby.

(b) The applicant must provide evidence of compliance with other federal statutes, including but not limited to the following:

(1) Debarment and suspension information is required in accordance with 2 CFR part 417 (Nonprocurement Debarment and Suspension) supplemented by 2 CFR part 180, if it applies. The section heading is “What information must I provide before entering into a covered transaction with a Federal agency?” located at 2 CFR 180.335. It is part of OMB’s Guidance for Grants and Agreements concerning Government-wide Debarment and Suspension.

(2) All of the organization’s known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in Subpart B of 2 CFR part 421, which adopts the Governmentwide implementation (2 CFR part 182) of the Drug-Free Workplace Act.

(3) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards).

(4) 2 CFR part 182 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)) and 2 CFR part 421 (Requirements for Drug Free Workplace (Financial Assistance)).

(5) Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.” For information on limited English proficiency and agency-specific guidance, go to <http://www.lep.gov>.

(6) All applicants will be screened for eligibility to participate in the grant program using Treasury’s Do Not Pay Portal in compliance with the Improper Payments Elimination and Recovery Improvement Act.

The following forms for acceptance of a federal award are now collected through registration or annual recertification in *SAM.gov* in the Financial Assistance General Certifications and Representations section:

- Form AD–1047, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.”

- Form AD–1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. Lower Tier Covered Transactions.”

- Form AD–1049, “Certification Regarding Drug-Free Workplace Requirements (Grants).”

- Form AD–3031, “Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.”

3. Reporting. Post-award reporting requirements can be found in the Grant Agreement. The grantee will provide an audit report or financial statements in accordance with Uniform Audit Requirements for Federal Awards at 2 CFR part 200, subpart F.

## I. Other Information

### *Paperwork Reduction Act*

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), OMB must approve all “collection of information” as a requirement for “answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*.” (44 U.S.C. 3502(3)(A).) RHS has concluded that the reporting requirements contained in this rule/ funding announcement will involve less than 10 persons and do not require approval under the provisions of the Act.

### *Civil Rights Requirements*

All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

### *Federal Funding Accountability and Transparency Act*

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at <http://fedgov.dnb.com/webform>. Similarly, all grant applicants must be registered in the System for Award Management (SAM) prior to submitting an application. Applicants may register for the SAM at <http://www.sam.gov/SAM>. All recipients of Federal financial grant assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

### *Non-Discrimination Statement*

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant’s name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature

and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or,

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: [program.intake@usda.gov](mailto:program.intake@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

**Joaquin Altoro,**

*Administrator, Rural Housing Service.*

[FR Doc. 2021-26757 Filed 12-9-21; 8:45 am]

**BILLING CODE 3410-XV-P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Nevada Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Nevada Advisory Committee (Committee) will hold a meeting via web conference on Friday, January 28, 2022, from 3:00 p.m. to 5:00 p.m. Pacific Time. The purpose of the meeting is to hear testimony from stakeholders who are involved with the planning, delivery, and use of remote learning for Nevada students in K-12 schools. Specifically, the Committee is interested in the progress being made to implement the Committee's report recommendations in The Impact of Remote Learning on Education Equity in Nevada.

**DATES:** Friday, January 28, 2022, from 3:00 p.m. to 5:00 p.m. Pacific Time.

*Webex Information:* Register online <http://bit.ly/nvsac12822>.

*Audio:* (800) 360-9505, ID: 2762 930 6409.

**FOR FURTHER INFORMATION CONTACT:** Ana Victoria Fortes, Designated Federal Officer (DFO) at [afortes@usccr.gov](mailto:afortes@usccr.gov) or by phone at (202) 681-0857.

**SUPPLEMENTARY INFORMATION:** Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons

with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit Office within 30 days following the meeting. Written comments may be mailed to Ana Victoria Fortes at [afortes@usccr.gov](mailto:afortes@usccr.gov) in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office (202) 681-0587.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ>.

Please click on the "Committee Meetings" tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

#### Agenda

- I. Welcome
- II. Presentations and Q & A
- III. Public Comment
- IV. Adjournment

Dated: December 6, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021-26706 Filed 12-9-21; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the New York Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New York Advisory Committee (Committee) will hold a meeting via

WebEx on Friday, January 21, 2022; from 1:00-2:15 p.m. ET, for the purpose of discussing and potentially voting to approve the Committee's draft report on potential racial discrimination in eviction policies and enforcement in New York.

**DATES:** The meeting will be held on Friday, January 21, 2022; from 1:00 p.m.-2:15 p.m. ET.

• To join by web conference please click the link below; password is USCCR: <https://bit.ly/31qGqGK>.

• To join by phone only, dial: 1-800-360-9505; Access Code: 199 334 6768#.

#### FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg, DFO, at [mtrachtenberg@usccr.gov](mailto:mtrachtenberg@usccr.gov) or 202-809-9618.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number. To request additional accommodations, please email [mtrachtenberg@usccr.gov](mailto:mtrachtenberg@usccr.gov) at least 7 days prior to the meeting for which accommodations are requested.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at [mtrachtenberg@usccr.gov](mailto:mtrachtenberg@usccr.gov) in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit at 202-809-9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at [www.facadatase.gov](http://www.facadatase.gov) under the Commission on Civil Rights,

New York Advisory Committee. Persons interested in the work of this Committee are also directed to the Commission's website, [www.usccr.gov](http://www.usccr.gov); persons may also contact the Regional Programs Unit office at the above email or phone number.

#### Agenda

- I. Welcome and Roll Call
- II. Announcements and Updates
- III. Approval of Minutes
- IV. Discussion: Committee's Draft Report on Eviction Policy and Enforcement in New York
- V. Potential Vote To Approve the Draft Report
- VI. Public Comment
- VII. Review Next Steps
- VIII. Adjournment

Dated: December 6, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021-26705 Filed 12-9-21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[S-133-2021]

#### Approval of Subzone Status, Getinge Group Logistics Americas LLC, Dayton, New Jersey

On September 2, 2021, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting subzone status subject to the existing activation limit of FTZ 49, on behalf of Getinge Group Logistics Americas LLC, in Dayton, New Jersey.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (86 FR 50524-50525, September 9, 2021). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 49W was approved on December 7, 2021, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 49's 2,000-acre activation limit.

Dated: December 7, 2021.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2021-26760 Filed 12-9-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-80-2021]

#### Foreign-Trade Zone (FTZ) 27—Boston, Massachusetts, Notification of Proposed Production Activity, Wyeth Pharmaceuticals, LLC (mRNA Bulk Drug Substance), Andover, Massachusetts

Wyeth Pharmaceuticals, LLC (Wyeth) submitted a notification of proposed production activity to the FTZ Board for its facility in Andover, Massachusetts within Subzone 27R. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on December 3, 2021.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status materials/components described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz). The proposed materials/components would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status materials and components include Pyrophosphatase Inorganic Animal Origin Free (AOF), Rnase-Free Dnase I, Rnase Inhibitor, and Uridine-5'-triphosphate (UTP) (duty rate ranges from duty-free to 6.5%). The request indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: [ftz@trade.gov](mailto:ftz@trade.gov). The closing period for their receipt is January 19, 2022.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact Diane Finver at [Diane.Finver@trade.gov](mailto:Diane.Finver@trade.gov).

Dated: December 6, 2021.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2021-26761 Filed 12-9-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-140]

#### Certain Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** Based on affirmative final determinations by the Department of Commerce (Commerce) and International Trade Commission (ITC), Commerce is issuing a countervailing duty (CVD) order on certain mobile access equipment and subassemblies thereof (mobile access equipment) from the People's Republic of China (China). In addition, Commerce is amending its final determination with respect to mobile access equipment from China to correct several ministerial errors.

**DATES:** Applicable December 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Theodore Pearson or Michael Romani, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2631 or (202) 482-0198, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

In accordance with section 705(a), 705(d), and 777(i) of the Tariff Act of 1930, as amended (the Act), on October 19, 2021, Commerce published its affirmative final determination that countervailable subsidies are being provided to producers and exporters of mobile access equipment from China.<sup>1</sup> The Coalition of American Manufacturers of Mobile Access Equipment (the petitioner) and Lingong Jinan Heavy Machinery Co., Ltd. (LGMG) submitted timely allegations on the record that Commerce made several ministerial errors in the *Final Determination*.<sup>2</sup> Section 705(e) of the

<sup>1</sup> See *Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 57809 (October 19, 2021) (*Final Determination*).

<sup>2</sup> See Petitioner's Letter, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Ministerial Error Allegations," dated October 20, 2021 (Petitioner Ministerial Error Allegations); see also LGMG's Letter, "Certain Mobile Access Equipment and

Continued

Act and 19 CFR 351.224(f) define ministerial errors as errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which Commerce considers ministerial. We reviewed the allegations and determined that we made ministerial errors in the *Final Determination*. See “Amendment to the Final Determination” section below for further discussion.

On December 3, 2021, pursuant to sections 705(d) of the Act, the ITC notified Commerce of its final affirmative determination that an industry in the United States is threatened with material injury by reason of subsidized imports of mobile access equipment from China, within the meaning of sections 705(b)(1)(A)(i).<sup>3</sup>

**Scope of the Order**

The products covered by this order are mobile access equipment from China. For a full description of the scope of this order, see Appendix I.

**Amendment to the Final Determination**

On October 20, 2021, the petitioner and LGMG submitted timely ministerial error allegations regarding the *Final Determination*.<sup>4</sup> Commerce reviewed the record, and on November 8, 2021, agreed that several errors alleged by the petitioner constituted ministerial errors within the meaning of section 705(e) of the Act and 19 CFR 351.224(f).<sup>5</sup> Specifically, Commerce determined that it had: Miscalculated the benchmark for ocean freight used in calculating the subsidy rates for certain the provision of inputs for less-than-adequate-remuneration (LTAR) programs; miscalculated the benchmark for inland freight used for certain of LGMG’s of inputs for LTAR programs; and failed to apply the “0.5 percent test” for determining whether to allocate or expense one of LGMG’s subsidy

programs.<sup>6</sup> Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Determination* to reflect the corrections of the ministerial errors described in the Ministerial Error Memorandum.

Based on these corrections, the subsidy rate for LGMG changed from 18.34 percent to 18.58 percent and the subsidy rate for Zhejiang Dingli Machinery Co., Ltd. (Dingli) changed from 11.95 percent to 11.97 percent. Because the all-others rate is based upon a weighted average of the subsidy rates calculated for Dingli and LGMG, the all-others rate changed from 12.93 percent to 12.98 percent. In addition, the adverse facts available subsidy rate for non-responsive companies, which is partially calculated using subsidy rates determined for Dingli and LGMG, changed from 448.70 percent to 448.80 percent.

**CVD Order**

As stated above, on December 3, 2021, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States producing mobile access equipment is threatened with material injury, within the meaning of section 705(b)(1)(A)(ii) of the Act, by reason of subsidized imports of mobile access equipment from China.<sup>7</sup> Therefore, in accordance with section 705(c)(2) of the Act, we are publishing this CVD order.

According to section 706(b)(2) of the Act, countervailing duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC’s notice of final determination if that determination is based upon the threat of material injury. Section 706(b)(1) of the Act states, “{i}f the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the

suspension of liquidation under section 703(d)(2), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(2), shall be subject to the imposition of countervailing duties under section 701(a).” In addition, section 706(b)(2) of the Act requires U.S. Customs and Border Protection (CBP) to refund any cash deposits of estimated countervailing duties posted before the date of publication of the ITC’s final affirmative determination, if the ITC’s final determination is based on threat other than the threat described in section 706(b)(1) of the Act. Because the ITC’s final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the publication of Commerce’s *Preliminary Determination* in the **Federal Register**,<sup>8</sup> section 706(b)(2) of the Act applies.

**Suspension of Liquidation**

As a result of the ITC’s determination and in accordance with section 706(a)(1) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties equal to the amount of the net countervailable subsidy for all relevant entries of mobile access equipment from China. In accordance with section 706 of the Act, Commerce will direct CBP to continue suspension of liquidation, effective on the date of publication of the ITC’s notice of final determination in the **Federal Register**, and to require a cash deposit for each entry of subject merchandise in an amount equal to the net countervailable subsidy rates listed below. The all-others rate applies to all producers and exporters of subject merchandise not specifically listed.

Company	Subsidy rate (percent)
Lingong Group Jinan Heavy Machinery Co., Ltd. <sup>9</sup> .....	18.58
Zhejiang Dingli Machinery Co., Ltd. <sup>10</sup> .....	11.97
Jinan Zhongtian International Trading <sup>11</sup> .....	448.80
Zhongshan Shiliwang Machinery Co., LTD <sup>12</sup> .....	448.80
Yantai Empire Industry and Trade <sup>13</sup> .....	448.80
Shandong Lede Machinery <sup>14</sup> .....	448.80

Subassemblies Thereof from China; CVD Investigation; LGMG Ministerial Error Comments,” dated October 20, 2021 (collectively, LGMG Ministerial Error Allegations).

<sup>3</sup> See ITC’s Letter, “Notification of ITC Final Determination,” dated December 3, 2021 (ITC Notification Letter).

<sup>4</sup> See Petitioner Ministerial Error Allegations; see also LGMG Ministerial Error Allegations.

<sup>5</sup> See Memorandum, “Countervailing Duty Investigation Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Ministerial Error Allegations in the Final Determination,” dated November 8, 2021 (Ministerial Error Memorandum).

<sup>6</sup> *Id.* Commerce also determined that it erred in selecting the discount rate used for allocating two

other subsidies for LGMG in the *Final Determination*.

<sup>7</sup> See ITC Notification Letter.

<sup>8</sup> See *Certain Mobile Access Equipment and Subassemblies Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 86 FR 41013 (July 30, 2021) (*Preliminary Determination*).

Company	Subsidy rate (percent)
Shandong Huifeng Auto Fittings <sup>15</sup> .....	448.80
Jinan Zhongtang Mechanical Equipment <sup>16</sup> .....	448.80
All Others .....	12.98

### Termination of the Suspension of Liquidation

Commerce will instruct CBP to terminate the suspension of liquidation for entries of mobile access equipment from China, entered or withdrawn from warehouse, for consumption prior to the publication of the ITC's notice of final determination. Commerce will also instruct CBP to refund any cash deposits made with respect to entries of mobile access equipment entered, or withdrawn from warehouse, for consumption on or after July 30, 2021 (*i.e.*, the date of publication of the *Preliminary Determination*), but before the date of publication of the ITC's notice of final determination. This notice constitutes the countervailing duty order with respect to mobile access equipment from China, pursuant to section 706(a) of the Act.

### Establishment of the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled "*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*" in the **Federal Register**.<sup>17</sup> On September 27, 2021, Commerce also published the notice entitled "*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*" in the **Federal Register**.<sup>18</sup> The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a

<sup>9</sup> Cross-owned affiliate is Linyi Lingong Machinery Group Co., Ltd.

<sup>10</sup> Cross-owned affiliates are Zhejiang Green Power Machinery Co., Ltd. and Shengda Fenghe Automotive Equipment Co., Ltd.

<sup>11</sup> See Preliminary Decision Memorandum at section "Application of AFA: Non-Responsive Companies."

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

<sup>18</sup> See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.<sup>19</sup>

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at <https://access.trade.gov>, within five business days of publication of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called "AISL-Annual Inquiry Service List."<sup>20</sup>

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance*, the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and

<sup>19</sup> *Id.*

<sup>20</sup> This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A-000-000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as "AISL-January Anniversary." Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at <https://access.trade.gov>.

### Special Instructions for Petitioners and Foreign Governments

In the *Final Rule*, Commerce stated that, "after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow."<sup>21</sup> Accordingly, as stated above, the petitioner and the Government of China should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Government of China will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Government of China are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

### Notification to Interested Parties

This notice constitutes the CVD order with respect to mobile access equipment from China pursuant to section 706(a) of the Act. Interested parties can find a list of CVD orders currently in effect at <http://enforcement.trade.gov/stats/iastats1.html>.

This amended final determination and order is issued and published in accordance with sections 705(d) and 706(a) of the Act and 19 CFR 351.211(b) and 351.224(e).

Dated: December 7, 2021.

### Ryan Majerus,

*Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix I

#### Scope of the Order

The merchandise covered by this order consists of certain mobile access equipment,

<sup>21</sup> See *Final Rule*, 86 FR at 52335.

which consists primarily of boom lifts, scissor lifts, and material telehandlers, and subassemblies thereof. Mobile access equipment combines a mobile (self-propelled or towed) chassis, with a lifting device (e.g., scissor arms, boom assemblies) for mechanically lifting persons, tools and/or materials capable of reaching a working height of ten feet or more, and a coupler that provides an attachment point for the lifting device, in addition to other components. The scope of this order covers mobile access equipment and subassemblies thereof whether finished or unfinished, and whether assembled or unassembled, and whether the equipment contains any additional features that provide for functions beyond the primary lifting function.

Subject merchandise includes, but is not limited to, the following subassemblies:

- Scissor arm assemblies, or scissor arm sections, for connection to chassis and platform assemblies. These assemblies include: (1) Pin assemblies that connect sections to form scissor arm assemblies, and (2) actuators that power the arm assemblies to extend and retract. These assemblies may or may not also include blocks that allow sliding of end sections in relation to frame and platform, hydraulic hoses, electrical cables, and/or other components;

- boom assemblies, or boom sections, for connection to the boom turntable, or to the chassis assembly, or to a platform assembly or to a lifting device. Boom assemblies include telescoping sections where the smallest section (or tube) can be nested in the next larger section (or tube) and can slide out for extension and/or articulated sections joined by pins. These assemblies may or may not include pins, hydraulic cylinders, hydraulic hoses, electrical cables, and/or other components;

- chassis assemblies, for connection to scissor arm assemblies, or to boom assemblies, or to boom turntable assemblies. Chassis assemblies include: (1) Chassis frames, and/or (2) frame sections. Chassis assemblies may or may not include axles, wheel end components, steering cylinders, engine assembly, transmission, drive shafts, tires and wheels, crawler tracks and wheels, fuel tank, hydraulic oil tanks, battery assemblies, and/or other components;

- boom turntable assemblies, for connection to chassis assemblies, or to boom assemblies. Boom turntable assemblies include turntable frames. Boom turntable assemblies may or may not include engine assembly, slewing rings, fuel tank, hydraulic oil tank, battery assemblies, counterweights, hoods (enclosures), and/or other components.

Importation of any of these subassemblies, whether assembled or unassembled, constitutes unfinished mobile access equipment for purposes of this order.

Processing of finished and unfinished mobile access equipment and subassemblies such as trimming, cutting, grinding, notching, punching, slitting, drilling, welding, joining, bolting, bending, beveling, riveting, minor fabrication, galvanizing, painting, coating, finishing, assembly, or any other processing either in the country of manufacture of the in-scope product or in a

third country does not remove the product from the scope. Inclusion of other components not identified as comprising the finished or unfinished mobile access equipment does not remove the product from the scope.

The scope excludes forklifts, vertical mast lifts, mobile self-propelled cranes and motor vehicles that incorporate a scissor arm assembly or boom assembly. Forklifts are material handling vehicles with a working attachment, usually a fork, lifted along a vertical guide rail with the operator seated or standing on the chassis behind the vertical mast. Vertical mast lifts are person and material lifting vehicles with a working attachment, usually a platform, lifted along a vertical guide rail with an operator standing on the platform. Mobile self-propelled cranes are material handling vehicles with a boom attachment for lifting loads of tools or materials that are suspended on ropes, cables, and/or chains, and which contain winches mounted on or near the base of the boom with ropes, cables, and/or chains managed along the boom structure. The scope also excludes motor vehicles (defined as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line pursuant to 49 U.S.C. 30102(a)(7)) that incorporate a scissor arm assembly or boom assembly. The scope further excludes vehicles driven or drawn by mechanical power operated only on a rail line that incorporate a scissor arm assembly or boom assembly. The scope also excludes: (1) Rail line vehicles, defined as vehicles with hi-rail gear or track wheels, and a fixed (non-telescopic) main boom, which perform operations on rail lines, such as laying rails, setting ties, or other rail maintenance jobs; and (2) certain rail line vehicle subassemblies, defined as chassis subassemblies and boom turntable subassemblies for rail line vehicles with a fixed (non-telescopic) main boom.

Certain mobile access equipment subject to this order is typically classifiable under subheadings 8427.10.8020, 8427.10.8030, 8427.10.8070, 8427.10.8095, 8427.20.8020, 8427.20.8090, 8427.90.0020 and 8427.90.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Parts of certain mobile access equipment are typically classifiable under subheading 8431.20.0000 of the HTSUS. While the HTSUS subheadings are provided for convenience and customs purposes only, the written description of the merchandise under order is dispositive.

[FR Doc. 2021-26890 Filed 12-9-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-840]

#### Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2019-2020; Correction

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Commerce (Commerce) published a notice in the *Federal Register* of November 26, 2021 in which Commerce issued the final results of the 2019-2020 administrative review of the antidumping order on certain frozen warmwater shrimp from India. This notice incorrectly spelled the name of one company listed in Appendix II.

**FOR FURTHER INFORMATION CONTACT:** Adam Simons, 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) 482-6172.

#### SUPPLEMENTARY INFORMATION:

##### Correction

In the *Federal Register* of November 26, 2021, in FR Doc 2021-25771, on page 67442, in the third column, correct the company name of “Kay Exports,” entry number 75, to “Kay Kay Exports.”

##### Background

On November 26, 2021, Commerce published in the *Federal Register* the *Final Results*.<sup>1</sup> We incorrectly listed the company “Kay Kay Exports” as “Kay Exports” in Appendix II.

##### Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended.

Dated: December 6, 2021.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations, Performing The Non-Exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2021-26771 Filed 12-9-21; 8:45 am]

**BILLING CODE 3510-DS-P**

<sup>1</sup> See *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2019-2020*, 86 FR 67440 (November 26, 2021) (*Final Results*).

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-489-824]

**Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Turkey: Notice of Initiation and Preliminary Results of Changed Circumstances Review**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request for a changed circumstances review (CCR), the Department of Commerce (Commerce) is initiating a CCR of the antidumping duty (AD) order on heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from Turkey. We preliminarily determine that Ozdemir Boru Profil Sanayi ve Ticaret Sirketi (A.S.) (Ozdemir AS) is the successor-in-interest to Ozdemir Boru Profil Sanayi ve Ticaret Limited Sirketi (Ozdemir Ltd. Sti.). Interested parties are invited to comment on these preliminary results.

**DATES:** Applicable December 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Samantha Kinney or Alexis Cherry, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2285 and (202) 482-0607, respectively.

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

On September 13, 2016, Commerce issued an AD order on imports of HWR pipes and tubes from Turkey.<sup>1</sup> Pursuant to the *Order*, Commerce excluded Ozdemir Ltd. Sti. from the *Order* for entries of HWR pipes and tubes that were produced and exported by Ozdemir Ltd. Sti.<sup>2</sup> In the most recently completed administrative review covering the period September 1, 2017, through August 31, 2018, we assigned Ozdemir Ltd. Sti. a weighted-average dumping margin of 35.66 percent for entries of HWR pipes and tubes where Ozdemir Ltd. Sti. was not both the producer and exporter of subject merchandise.<sup>3</sup> On November 2, 2021,

<sup>1</sup> 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 (September 13, 2016) (*Order*).

<sup>2</sup> *Id.*

<sup>3</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Antidumping Duty Administrative*

Ozdemir AS requested that Commerce conduct an expedited CCR of the *Order* to determine that Ozdemir AS is the successor-in-interest to Ozdemir Ltd. Sti.<sup>4</sup> In this submission, Ozdemir AS addressed the basic factors Commerce analyzes with respect to successor-in-interest determinations in the AD context and provided supporting documentation.<sup>5</sup> Commerce received no comments from interested parties on Ozdemir's CCR Submission.

**Scope of the Order**

The merchandise covered by the *Order* is certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-500, grade B specifications, or comparable domestic or foreign specifications.

*Included products are those in which:* (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

*Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64455 (November 22, 2019).

<sup>4</sup> See Ozdemir AS's Letter, "Request for Changed Circumstances Reviews," dated November 2, 2021 (Ozdemir's CCR Submission). In this submission, Ozdemir AS also requested that Commerce conduct an expedited CCR of the companion countervailing duty (CVD) order on HWR pipes and tubes from Turkey. Commerce intends to address the CCR request with respect to the CVD order in a separate **Federal Register** notice.

<sup>5</sup> *Id.*

**Initiation of Changed Circumstances Review**

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216, Commerce will conduct a CCR upon a request from an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order.<sup>6</sup> The information submitted by Ozdemir AS supporting its claim that Ozdemir AS is the successor-in-interest to Ozdemir Ltd. Sti. demonstrates changed circumstances sufficient to initiate a review.<sup>7</sup>

The information submitted by Ozdemir AS demonstrates that its request is based solely on a change in corporate classification from a limited liability company (limited sirketi) to a joint stock company (anonim sirketi), effective September 24, 2021.<sup>8</sup> Moreover, the evidence submitted in support of Ozdemir's request demonstrates that Ozdemir AS is otherwise the same business entity as Ozdemir Ltd. Sti. Therefore, in accordance with the above-referenced regulation, Commerce is initiating a CCR to determine whether Ozdemir AS is the successor-in-interest to Ozdemir Ltd. Sti.

**Preliminary Results**

When it concludes that expedited action is warranted, Commerce may publish the notice of initiation and preliminary results of a CCR concurrently.<sup>9</sup> Commerce has combined the notice of initiation and preliminary results in successor-in-interest cases when sufficient documentation has been provided supporting the request to make a preliminary determination.<sup>10</sup> In this instance, because we have on the record information to support the request for a preliminary determination and no other interested party comments, we find that expedited action is warranted, and we are combining the notice of initiation and the notice of preliminary results of review, in accordance with 19 CFR 351.221(c)(3)(ii).

**AD Methodology**

In a CCR, we generally consider a company to be the successor to another

<sup>6</sup> See 19 CFR 351.216(c).

<sup>7</sup> See 19 CFR 351.216(d).

<sup>8</sup> See Ozdemir's CCR Submission at 4.

<sup>9</sup> See 19 CFR 351.221(c)(3)(ii).

<sup>10</sup> See, e.g., *Multilayered Wood Flooring from the People's Republic of China: Initiation and Preliminary Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 82 FR 9561 (February 7, 2017), unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Reviews*, 82 FR 14691 (March 22, 2017).

company for AD cash deposit purposes if the operations of the successor are not materially dissimilar from those of its predecessor.<sup>11</sup> In making this determination, Commerce examines a number of factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) suppliers; and (4) customer base.<sup>12</sup> While no single factor or combination of factors is dispositive, Commerce will generally consider one company to be the successor to another if its resulting operation is essentially the same as that of its predecessor.<sup>13</sup> Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.<sup>14</sup>

In its CCR submission, Ozdemir AS provided evidence demonstrating that Ozdemir AS's operations are not materially dissimilar from those of Ozdemir Ltd. Sti. Specifically, Ozdemir AS has the same shareholders and same management team as Ozdemir Ltd. Sti.<sup>15</sup> Further, Ozdemir AS submitted capacity records showing that its production facilities, capacities, number of employees, machinery, and equipment are the same as its predecessor's.<sup>16</sup> Finally, Ozdemir AS submitted evidence that there have been no material changes to the company's suppliers or customer base.<sup>17</sup> Based on the foregoing, we preliminarily determine that Ozdemir AS is the successor-in-interest to Ozdemir Ltd. Sti.

Should our final results remain unchanged from these preliminary results, we will instruct U.S. Customs and Border Protection to assign entries of subject merchandise that are not both produced and exported by Ozdemir AS

the AD cash deposit rate applicable to Ozdemir Ltd. Sti., effective as of the date of publication of the final results. Entries that are both produced and exported by Ozdemir AS will be excluded from the *Order*.

#### Public Comment

Any interested party may request a hearing within 14 days of publication of this notice, in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs not later than 14 days after the date of publication of this notice.<sup>18</sup> Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs.<sup>19</sup> Parties who submit case briefs or rebuttal briefs in this CCR are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>20</sup> All comments are to be filed electronically using ACCESS, available to registered users at <https://access.trade.gov>, and must also be served on interested parties. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day it is due.<sup>21</sup> Note that Commerce has temporarily modified certain requirements for serving documents containing business proprietary information, until further notice.<sup>22</sup>

Consistent with 19 CFR 351.216(e), we intend to issue the final results of this CCR no later than 270 days after the date on which this review was initiated or within 45 days of publication of these preliminary results, if all parties agree to our preliminary findings.

#### Notification to Interested Parties

We are issuing and publishing this initiation and preliminary results notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: December 6, 2021.

#### Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of The Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021-26773 Filed 12-9-21; 8:45 am]

#### BILLING CODE 3510-DS-P

<sup>18</sup> Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

<sup>19</sup> Commerce is exercising its discretion under 19 CFR 351.309(d)(1) to alter the time limit for the filing of rebuttal briefs.

<sup>20</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>21</sup> See 19 CFR 351.303(b).

<sup>22</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-874]

#### Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Final Results of Countervailing Duty Administrative Review; 2019

**AGENCY:** Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) finds countervailable subsidies are being provided to Goodluck India Limited (Goodluck) and Tube Investments of India Ltd. (TI), producers/exporters of certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India during the period of review, January 1, 2019, through December 31, 2019.

**DATES:** Applicable December 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Eliza Siordia or Eric Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3878 or (202) 482-1988, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

Commerce published the *Preliminary Results* on June 25, 2021.<sup>1</sup> On October 1, 2021, Commerce extended the deadline for the final results of this review until December 22, 2021. For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.<sup>2</sup>

##### Scope of the Order

The merchandise covered by the order is cold-drawn mechanical tubing from India. For a complete description of the scope of the order, see the Issues and Decision Memorandum.

##### Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and

<sup>1</sup> See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Results of Countervailing Duty Administrative Review; 2019*, 86 FR 33639 (June 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results of the 2019 Administrative Review of the Countervailing Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., *Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Multilayered Wood Flooring from the People's Republic of China*, 79 FR 48117, 48118 (August 15, 2014), unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review*, 79 FR 58740 (September 30, 2014).

<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., *Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China*, 81 FR 76561 (November 3, 2016), unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Changed Circumstances Review*, 81 FR 91909 (December 19, 2016).

<sup>15</sup> See Ozdemir's CCR Submission at 3-4 and Exhibit 3.

<sup>16</sup> *Id.* at 4-5 and Exhibits 4-5.

<sup>17</sup> *Id.* at Exhibits 8-9.



Decision Memorandum. A list of the issues raised by interested parties and to which we responded in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

### Changes Since the Preliminary Results

Based on our review and analysis of the comments received from parties, we made certain changes to the subsidy rate calculations for Goodluck and TII. For a discussion of these comments, see the Issues and Decision Memorandum.

### Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.*, a financial contribution from a government or public entity that gives rise to a benefit to the recipient, and the subsidy is specific.<sup>3</sup> For a full description of the methodology underlying our conclusions, see the Issues and Decision Memorandum.

### Final Results of Administrative Review

In accordance with section 751(a)(1)(A) of the Act and 19 CFR 351.221(b)(5), we determine the total estimated net countervailable subsidy rates for the period January 1, 2019, through December 31, 2019, to be as follows:

Company	Subsidy rate (percent <i>ad valorem</i> )
Goodluck India Limited <sup>4</sup> .....	5.35
Tube Investments of India Ltd. <sup>5</sup> .....	7.70

### Disclosure

Commerce will disclose to the parties in this proceeding the calculations

<sup>3</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>4</sup> This rate applies to the following entities: Goodluck India Limited (formerly Good Luck Steel Tubes Limited); Good Luck Steel Tubes Limited Good Luck House; and Good Luck Industries.

<sup>5</sup> Tube Investments of India Ltd. is also known as Tube Investments of India Limited.

performed for these final results within five days of the date of publication of this notice in the **Federal Register**.<sup>6</sup>

### Assessment Rate

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after publication of these final results. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

### Cash Deposit Requirements

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

### Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

### Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

<sup>6</sup> See 19 CFR 351.224(b).

Dated: December 6, 2021.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of The Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Changes Since the *Preliminary Results*
- V. Subsidies Valuation Information
- VI. Benchmarks and Interest Rates
- VII. Analysis of the Programs
- VIII. Discussion of the Issues
  - Comment 1: Whether to Countervail Goodluck's State Government of Gujarat (SGOG) Programs
  - Comment 2: Whether to Include Deemed Exports in Certain Denominators
- IX. Recommendation

[FR Doc. 2021-26772 Filed 12-9-21; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-428-844]

#### Certain Carbon and Alloy Steel Cut-To-Length Plate From Germany: Final Results of Antidumping Duty Administrative Review; 2019-2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that AG der Dillinger Hüttenwerke (Dillinger) did not make sales of certain carbon and alloy steel cut-to-length plate from Germany at less than normal value during the period of review (POR), May 1, 2019, through April 30, 2020.

**DATES:** Applicable December 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger, 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.

#### SUPPLEMENTARY INFORMATION:

#### Background

This review covers one producer/exporter of the subject merchandise, Dillinger.

On August 6, 2021, Commerce published the *Preliminary Results*.<sup>1</sup> On

<sup>1</sup> See *Certain Carbon and Alloy Steel Cut-To-Length Plate From Germany: Preliminary Results of Antidumping Duty Administrative Review and*

September 7, 2021, we received case briefs from SSAB Enterprises, LLC, a domestic interested party, and Dillinger. On September 14, 2021, we received a rebuttal brief from Dillinger. For a complete discussion of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.<sup>2</sup>

### Scope of the Order

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances from Germany. Products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.<sup>3</sup>

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum. Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

### Changes Since the Preliminary Results

Based on a review of the record and comments received from interested

<sup>1</sup> *Preliminary Determination: 2019–2020*, 86 FR 43183 (August 6, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memorandum, “Issues and Decision Memorandum for the Final Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Germany,” dated concurrently with, and hereby adopted by, these results (Issues and Decision Memorandum).

<sup>3</sup> For a full description of the scope of the order, see *Preliminary Results* PDM at 2–6.

parties regarding our *Preliminary Results*, we made certain changes to Dillinger's margin calculation.<sup>4</sup> However, the weighted-average margin calculated for Dillinger did not change from the rate presented in the *Preliminary Results*.

### Final Results of the Review

As a result of this review, we determine the following weighted-average dumping margin for the period May 1, 2019, through April 30, 2020:

Producer/exporter	Weighted-average dumping margin (percent)
AG der Dillinger Hüttenwerke .....	0.00

### Disclosure of Calculations

We intend to disclose the calculations performed for Dillinger in connection with these final results within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

### Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Where the weighted average dumping margin for Dillinger is zero or *de minimis* (*i.e.*, less than 0.5 percent), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.<sup>5</sup>

Commerce's “automatic assessment” will apply to entries of subject merchandise during the POR produced by Dillinger for which the reviewed company did not know that the merchandise it 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.<sup>6</sup>

<sup>4</sup> See Issues and Decision Memorandum.

<sup>5</sup> See section 751(a)(2)(C) of the Act.

<sup>6</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

### Cash Deposit Requirements

The following cash 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 company listed above will be that 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 listed above, the cash deposit will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a previous review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 21.04 percent, the all-others rate established in the LTFV investigation.<sup>7</sup> These deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties

<sup>7</sup> See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders*, 82 FR 24096, 24098 (May 25, 2017).

occurred and the subsequent assessment of double antidumping duties.

### Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

### Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 3, 2021.

#### Ryan Majerus,

*Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of The Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Margin Calculations
- IV. Discussion of the Issues
  - Comment 1: Treatment of Home Market Downstream Service Center Sales
  - Comment 2: Exclusion of U.S. Entries Entered Under Temporary Import Bond
  - Comment 3: Home Market Level of Trade
  - Comment 4: The Control Number for Home Market Service Center Sales
  - Comment 5: Differential Pricing Methodology
  - Comment 6: Cost of Production Issues
- V. Recommendation

[FR Doc. 2021-26774 Filed 12-9-21; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-851-805, A-475-844, A-821-835]

### Emulsion Styrene-Butadiene Rubber From the Czech Republic, Italy, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable December 6, 2021.

**FOR FURTHER INFORMATION CONTACT:** Leo Ayala at (202) 482-3945 (Czech Republic); Zachary Le Vene at (202) 482-0056 (Italy); and Caitlin Monks at (202) 482-2670 (the Russian Federation (Russia)); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

#### The Petitions

On November 15, 2021, the Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of emulsion styrene-butadiene rubber (ESBR) from the Czech Republic, Italy, and Russia filed in proper form on behalf of Lion Elastomers LLC (the petitioner), a domestic producer of ESBR.<sup>1</sup>

On November 17 and 24, and December 1, 2021, Commerce requested additional information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.<sup>2</sup> The petitioner filed responses to the supplemental questionnaires on November 19 and 24, and December 1, 2021.<sup>3</sup>

In accordance with section 732(b) of the Act, the petitioner alleges that

<sup>1</sup> See Petitioner's Letter, "Petition (vol. I-IV) for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy, and Russia," dated November 12, 2021 (the Petitions). The Petitions were filed with Commerce and the U.S. International Trade Commission (ITC) on November 12, 2021, after 12:00 noon, and pursuant to 19 CFR 207.10(a), are deemed to have been filed with the ITC on the next business day, November 15, 2021. Because section 732(b)(2) of the Tariff Act of 1930, as amended (the Act), requires simultaneous filing of the Petitions with Commerce and the ITC, Commerce deemed the Petitions to have been filed with Commerce on November 15, 2021. See Memorandum, "Decision Memorandum Concerning the Filing Date of the Petitions," dated November 15, 2021.

<sup>2</sup> See Commerce's Letters, "Petitions for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy, and the Russian Federation: Supplemental Questions," dated November 17, 2021; Country-Specific Supplemental Questionnaires: Czech Republic Supplemental, Italy Supplemental, and Russia Supplemental, dated November 17, 2021; Country-Specific Memoranda pertaining to a phone call with Counsel to the Petitioner, dated November 24, 2021; and Memorandum, "Phone Call with Counsel to the Petitioner," dated December 1, 2021.

<sup>3</sup> See Petitioner's Letters, "Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy, and Russian Federation: Response to General Issues Supplemental Questions," dated November 19, 2021 (General Issues Supplement); Country-Specific Supplemental Responses, dated November 19, 2021; and Country-Specific Second Supplemental Responses, dated November 24, 2021; and Country-Specific Third Supplemental Responses, dated December 1, 2021.

imports of ESBR from the Czech Republic, Italy, and Russia are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the ESBR industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.<sup>4</sup>

#### Period of Investigation

Because the Petitions were filed on November 15, 2021, the period of investigation (POI) for these LTFV investigations is October 1, 2020, through September 30, 2021, pursuant to 19 CFR 351.204(b)(1).<sup>5</sup>

#### Scope of the Investigations

The product covered by these investigations is ESBR from the Czech Republic, Italy, and Russia. For a full description of the scope of these investigations, see the appendix to this notice.

#### Comments on the Scope of the Investigations

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).<sup>6</sup> Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,<sup>7</sup> all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on December 27, 2021, which is the next business day after 20 calendar days from the

<sup>4</sup> See *infra*, section titled "Determination of Industry Support for the Petitions."

<sup>5</sup> See 19 CFR 351.204(b)(1).

<sup>6</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>7</sup> See 19 CFR 351.102(b)(21) (defining "factual information").

signature date of this notice.<sup>8</sup> Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on January 6, 2022, which is ten calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of these investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent AD investigations.

### Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.<sup>9</sup> An electronically filed document must be received successfully in its entirety by the time and date on which it is due.

### Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of ESBR to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General

product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe ESBR, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on December 27, 2021, which is the next business day after 20 calendar days from the signature date of this notice.<sup>10</sup> Any rebuttal comments must be filed by 5:00 p.m. ET on January 6, 2022, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

### Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph

(A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The ITC, which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,<sup>11</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>12</sup>

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.<sup>13</sup> Based on our analysis of the information submitted on the record, we have determined that ESBR, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>14</sup>

<sup>8</sup> The deadline for comments falls on December 26, 2021, which is a Sunday. Therefore, in accordance with the *Next Business Day Rule*, the appropriate deadline is the next business day (in this instance, December 27, 2021). See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005) (*Next Business Day Rule*).

<sup>9</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at [https://access.trade.gov/help/Handbook\\_on\\_Electronic\\_Filing\\_Procedures.pdf](https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf).

<sup>10</sup> The deadline for comments falls on December 26, 2021, which is a Sunday. Therefore, in accordance with the *Next Business Day Rule*, the appropriate deadline is the next business day (in this instance, December 27, 2021). See *Next Business Day Rule*.

<sup>11</sup> See section 771(10) of the Act.

<sup>12</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade January 24, 2001) (citing *Algoma Steel Corp. v. United States*, 688 F. Supp. 639, 644 (Ct. Int'l Trade June 8, 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

<sup>13</sup> See Petitions at Volume I at 15–22.

<sup>14</sup> For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, see *Antidumping Duty Investigation Initiation Checklists: Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy, and the Russian Federation (Country-Specific AD Initiation Checklists) at Attachment II, Analysis of Industry Support for the Antidumping Duty Petitions Covering Emulsion Styrene-Butadiene Rubber from the Czech Republic, Italy, and the Russian Federation (Attachment II)*. These checklists are dated concurrently with this notice and on file electronically via ACCESS.

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2020 and estimated the 2020 production of Goodyear Chemical, the only other known U.S. producer of ESBR.<sup>15</sup> The petitioner also provided a letter of support from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (USW)—USW Local 13–228–03, stating that the USW represents the workers at the petitioner’s Port Neches, TX ESBR plant and that it supports the Petitions.<sup>16</sup> The petitioner also provided a letter of support from the International Union of Operating Engineers (IUOE)—IUOE Local 564, stating that the IUOE represents workers at Goodyear Chemical’s Houston, TX ESBR plant and that it supports the Petitions.<sup>17</sup> The petitioner stated that unions representing workers responsible for 100 percent of the total production of the domestic like product support the Petitions.<sup>18</sup> Because the petitioner and Goodyear Chemical are the only known U.S. producers of ESBR, the petitioner stated that the Petitions are supported by 100 percent of the U.S. industry.<sup>19</sup> We relied on data provided by the petitioner for purposes of measuring industry support.<sup>20</sup>

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions. First, the Petitions established support from domestic producers and workers accounting for more than 50 percent of the total production of the domestic like product, and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*,

polling).<sup>21</sup> Second, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers and workers who support the Petitions account for at least 25 percent of the total production of the domestic like product.<sup>22</sup> Finally, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers and workers who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.<sup>23</sup> Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.<sup>24</sup>

#### **Allegations and Evidence of Material Injury and Causation**

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>25</sup>

The petitioner contends that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression and suppression; lost sales and revenues; declines in production, shipments, capacity utilization, and employment; decline in financial performance; inability to implement long-term expansion and growth projects; and the magnitude of the estimated dumping margins.<sup>26</sup> We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate

evidence, and meet the statutory requirements for initiation.<sup>27</sup>

#### **Allegations of Sales at LTFV**

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate these LTFV investigations of imports of ESBR from the Czech Republic, Italy, and Russia. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the country-specific AD Initiation Checklists.

#### **U.S. Price**

For the Czech Republic, Italy, and Russia, the petitioner established export prices (EPs) using the average unit value (AUVs) of publicly available import data. For the Czech Republic and Italy, the petitioner made adjustments to the AUVs for foreign inland freight incurred in subject foreign countries for purposes of calculating ex-factory, or net, EPs. For Russia, the petitioner deducted expenses associated with inland freight and brokerage and handling costs incurred in Russia to calculate an ex-factory, or net, EP.<sup>28</sup>

#### **Normal Value Based on Constructed Value**<sup>29</sup>

For the Czech Republic, Italy, and Russia, the petitioner stated it was unable to obtain home-market or third-country prices for ESBR to use as a basis for NV. Therefore, for the Czech Republic, Italy, and Russia, the petitioner calculated NV based on CV.<sup>30</sup>

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, selling, general, and administrative expenses, financial expenses, and profit.<sup>31</sup> For the Czech Republic, Italy, and Russia, in calculating the cost of manufacturing, the petitioner relied on the production experience and input consumption rates of the petitioner, a U.S. ESBR producer, valued using publicly available information applicable to each

<sup>15</sup> See Petitions at Volume I at 4 and Exhibits I–1, I–3, I–15, and I–16; *see also* General Issues Supplement at 1–2 and Exhibit SI–16.

<sup>16</sup> See Petitions at Volume I at 4 and Exhibit I–5.

<sup>17</sup> See Petitions at Volume I at 4 and Exhibit I–6.

<sup>18</sup> *Id.* at 4 and Exhibits I–5 and I–6.

<sup>19</sup> See Petitions at Volume I at 2–4 and Exhibits I–1, I–3, and I–4.

<sup>20</sup> *Id.* at 2–4 and Exhibits I–1, I–3, I–4, I–15, and I–16; *see also* General Issues Supplement at 1–2 and Exhibit SI–16. For further discussion, *see* Attachment II of the Country-Specific AD Initiation Checklists.

<sup>21</sup> See Attachment II of the Country-Specific AD Initiation Checklists; *see also* section 732(c)(4)(D) of the Act.

<sup>22</sup> See Attachment II of the AD Initiation Checklist.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See Petitions at Volume I at 14, 24 and Exhibit I–12.

<sup>26</sup> See Volume I of the Petitions at 13–14, 23–33 and Exhibits I–11, I–12, I–14 through I–16; *see also* General Issues Supplement at 2 and Exhibit SI–11.

<sup>27</sup> See Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petitions Covering Emulsion Styrene-Butadiene Rubber from the Czech Republic, Italy, and the Russian Federation (Attachment III).

<sup>28</sup> See Country-Specific AD Initiation Checklists.

<sup>29</sup> In accordance with section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the constructed value (CV) and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

<sup>30</sup> See Country-Specific AD Initiation Checklists.

<sup>31</sup> See Country-Specific AD Initiation Checklists.

respective subject country.<sup>32</sup> For the Czech Republic, Italy, and Russia, in calculating selling, general, and administrative expenses, financial expenses, and profit ratios (where applicable), the petitioner relied on the 2020 financial statements of an ESBR producer(s) or producer(s) of comparable merchandise domiciled in each respective subject country.<sup>33</sup>

#### Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of ESBR from the Czech Republic, Italy, and Russia are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to CV in accordance with section 773 of the Act, the estimated dumping margins for ESBR concerning each of the countries covered by this initiation are as follows: (1) Czech Republic—11.00 percent; (2) Italy—28.97 percent; and (3) Russia—263.33 percent.<sup>34</sup>

#### Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating these LTFV investigations to determine whether imports of ESBR from the Czech Republic, Italy, and Russia are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

#### Respondent Selection

In the Petitions, the petitioner identified four companies in Russia as producers and/or exporters of ESBR.<sup>35</sup>

Following standard practice in LTFV investigations involving market economy countries, in the event that Commerce determines that the number of exporters or producers in any individual case is large such that Commerce cannot individually examine each company based upon its resources, where appropriate, Commerce intends to select mandatory respondents in that case based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the “Scope of the Investigations,” in the appendix.

On December 3, 2021, Commerce released CBP data on imports of ESBR from Russia under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days after the publication date of the notice of initiation of these investigations.<sup>36</sup> Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce’s website at <https://enforcement.trade.gov/apo>.

Comments on CBP data and respondent selection for Russia must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline.

In the Petitions, the petitioner identified one company in the Czech Republic as a producer/exporter of ESBR (*i.e.*, Synthos Kralupy A.S. (Synthos)) and one company in Italy as a producer/exporter of ESBR (*i.e.*, Eni Versalis S.p.A. (Versalis)) and provided independent third-party information as support.<sup>37</sup> We currently know of no additional producers/exporters of ESBR from the Czech Republic or Italy. Accordingly, Commerce intends to individually examine all known producers/exporters in the investigations from these countries (*i.e.*, the companies cited above). We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Because we intend to examine all known producers/exporters in the Czech Republic and Italy, if no comments are received or if comments received further support the existence of these sole producers/exporters in the Czech Republic and Italy, respectively, we do not intend to conduct respondent

selection and will proceed to issuing the initial antidumping questionnaires to the companies identified. However, if comments are received which create a need for a respondent selection process, we intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

#### Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of the Czech Republic, Italy, and Russia via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

#### ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

#### Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of ESBR from the Czech Republic, Italy, and/or Russia are materially injuring, or threatening material injury to, a U.S. industry.<sup>38</sup> A negative ITC determination for any country will result in the investigation being terminated with respect to that country.<sup>39</sup> Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

#### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce’s regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>40</sup> and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See Petitions at Volume I at 12–13 and Exhibit I–3.

<sup>36</sup> See Memorandum, “Antidumping Duty Petition on Imports of Emulsion Styrene-Butadiene Rubber from the Russian Federation: Release of U.S. Customs and Border Protection Entry Data,” dated December 3, 2021.

<sup>37</sup> See Petitions at Volume I at 12–13 and Exhibit I–3.

<sup>38</sup> See section 733(a) of the Act.

<sup>39</sup> *Id.*

<sup>40</sup> See 19 CFR 351.301(b).

already on the record that the factual information seeks to rebut, clarify, or correct.<sup>41</sup> Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

### Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent’s initial section D questionnaire response.

### Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which

extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review Commerce’s regulations concerning factual information prior to submitting factual information in these investigations.<sup>42</sup>

### Certification Requirements

Any party submitting factual information in an AD proceeding must certify to the accuracy and completeness of that information.<sup>43</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>44</sup> Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by the filing a letter of appearance as discussed). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>45</sup>

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: December 6, 2021.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix—Scope of the Investigations

The products covered by these investigations are cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the investigations includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, etc. ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigations covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as “Clear” or “White Rubber.” The 1700 grades are oil-extended and thus darker in color, and are often called “Brown Rubber.”

Specifically excluded from the scope of these investigations are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (i.e., IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to these investigations are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstracts Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XB423]

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy 2022 Ice Exercise Activities in the Arctic Ocean

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

**ACTION:** Notice; proposed incidental harassment authorization; request for

<sup>42</sup> See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

<sup>43</sup> See section 782(b) of the Act.

<sup>44</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

<sup>45</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

<sup>41</sup> See 19 CFR 351.301(b)(2).

comments on proposed authorization and possible renewal.

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to Ice Exercise 2022 (ICEX22) north of Prudhoe Bay, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision. The Navy's activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA).

**DATES:** Comments and information must be received no later than January 10, 2022.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to [ITP.Davis@noaa.gov](mailto:ITP.Davis@noaa.gov).

**Instructions:** NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Leah Davis, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental->

*take-authorizations-military-readiness-activities*. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

**Background**

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring, and reporting of the takings are set forth.

The 2004 NDAA (Pub. L. 108-136) removed the "small numbers" and "specified geographical region" limitations indicated above and amended the definition of "harassment" as applied to a "military readiness activity." The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment. Accordingly, NMFS plans to adopt the

Navy's Environmental Assessment (EA), provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing the IHA. The Navy's EA was made available for public comment at <https://www.nepa.navy.mil/icex/> for 30 days beginning November 24, 2021.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

**Summary of Request**

On August 26, 2021, NMFS received a request from the Navy for an IHA to take marine mammals incidental to submarine training and testing activities including establishment of a tracking range on an ice floe in the Arctic Ocean, north of Prudhoe Bay, Alaska. The application was deemed adequate and complete on November 4, 2021. The Navy's request is for take of a small number of ringed seals (*Pusa hispida*) by Level B harassment only. Neither the Navy nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued IHAs to the Navy for similar activities (83 FR 6522; February 14, 2018, 85 FR 6518; February 5, 2020). The Navy complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found below, in the Estimated Take section.

**Description of Proposed Activity**

*Overview*

The Navy proposes to conduct submarine training and testing activities, which includes the establishment of a tracking range and temporary ice camp, and research in the Arctic Ocean for six weeks beginning in February 2022. Submarine active acoustic transmissions may result in occurrence of Level B harassment, including temporary hearing impairment (temporary threshold shift (TTS)) and behavioral harassment, of ringed seals.

*Dates and Duration*

The specified activities would occur over approximately a six-week period between February and April 2022, including deployment and demobilization of the ice camp. The submarine training and testing activities would occur over approximately four weeks during the six-week period. The proposed IHA would be effective from



February 1, 2022 through April 30, 2022.

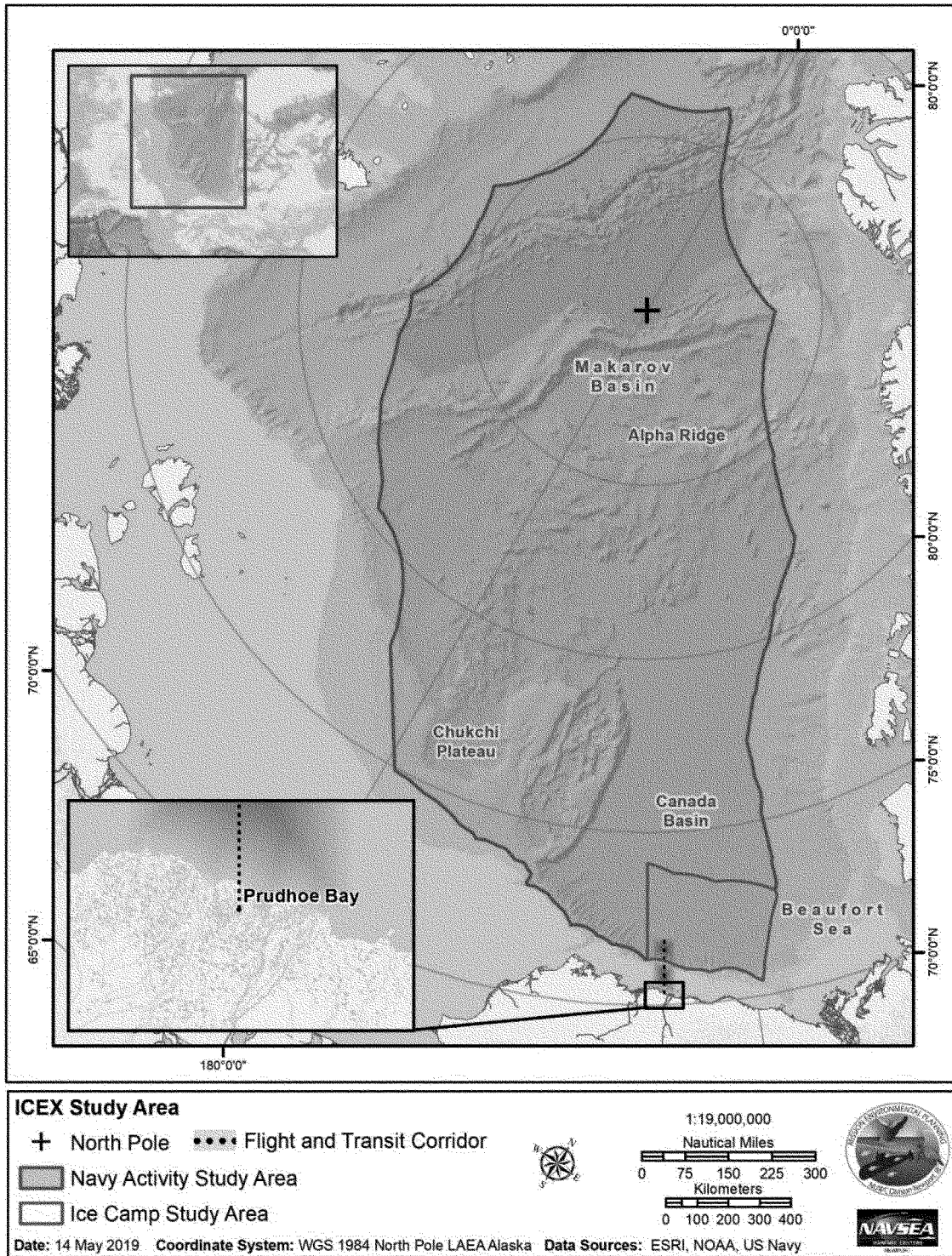
*Geographic Region*

The ice camp would be established approximately 100–200 nautical miles (nmi) north of Prudhoe Bay, Alaska. The exact location of the camp cannot be identified ahead of time as required conditions (e.g., ice cover) cannot be forecasted until exercises are expected

to commence. Prior to the establishment of the ice camp, reconnaissance flights would be conducted to locate suitable ice conditions. The reconnaissance flights would cover an area of approximately 70,374 square kilometers (km<sup>2</sup>). The actual ice camp would be no more than 1.6 kilometers (km) in diameter (approximately 2 km<sup>2</sup> in area). The vast majority of submarine training and testing would occur near the ice

camp, however some submarine training and testing may occur throughout the deep Arctic Ocean basin near the North Pole within the larger Navy Activity Study Area. Figure 1 shows the locations of the Navy Activity Study Area and Ice Camp Study Area, collectively referred to in this document as the “ICEX22 Study Area”.

**BILLING CODE 3510–22–P**



**Figure 1—ICEX22 Study Area in the Arctic Ocean**

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*Detailed Description of Specific Activity*

The Navy proposes to conduct submarine training and testing activities, which includes the establishment of a tracking range and temporary ice camp, and research in the

Arctic Ocean for six weeks beginning in February 2022. The activity proposed for 2022 and that is being evaluated for this proposed IHA—ICEX22—is part of a regular cycle of recurring training and testing activities that the Navy proposes to conduct in the Arctic. Under the

Navy’s proposed cycle, submarine and tracking range activities would be conducted biennially, but a temporary ice camp would be established annually, either in the ice camp study area (Figure 1) or on a frozen lake in Deadhorse, Alaska. Some of the

submarine training and testing may occur throughout the deep Arctic Ocean basin near the North Pole, within the Navy Activity Study Area (Figure 1). The temporary ice camps that would be constructed during years in which submarine training and testing is not conducted (referred to as “beta camps”) would support testing and evaluation of Arctic equipment, but would involve fewer personnel and be shorter in duration than camps constructed during years in which submarine training and testing is conducted. Activities that the Navy proposes to conduct after ICEX22, including the construction of the beta camps, are outside of the scope of this proposed IHA, and therefore, are not discussed further in this document. Additional information about the Navy’s proposed training and testing activities in the Arctic is available in the Navy’s 2021 Draft Environmental Assessment/Overseas Environmental Assessment For the Ice Exercise Program, available at <https://www.nepa.navy.mil/icex/>. Only activities which may occur during ICEX22 are discussed in this section.

#### Ice Camp

ICEX22 includes the deployment of a temporary camp situated on an ice floe. Reconnaissance flights to search for suitable ice conditions for the ice camp would depart from the public airport in Deadhorse, Alaska. The camp generally would consist of a command hut, dining hut, sleeping quarters, a powerhouse, runway, and helipad. The number of structures and tents would range from 15–20, and each tent is typically 2 meters (m) by 6 m in size. The completed ice camp, including runway, would be approximately 1.6 km in diameter. Support equipment for the ice camp would include snowmobiles, gas-powered augers and saws (for boring holes through ice), and diesel generators. All ice camp materials, fuel, and food would be transported from Prudhoe Bay, Alaska, and delivered by air-drop from military transport aircraft (e.g., C-17 and C-130), or by landing at the ice camp runway (e.g., small twin-engine aircraft and military and commercial helicopters).

A portable tracking range for submarine training and testing would be installed in the vicinity of the ice camp. Ten hydrophones, located on the ice and extending to 30 m below the ice, would be deployed by drilling or melting holes in the ice and lowering the cable down into the water column. Four hydrophones would be physically connected to the command hut via cables while the others would transmit data via radio frequencies. Additionally, tracking pingers would be configured

aboard each submarine to continuously monitor the location of the submarines. Acoustic communications with the submarines would be used to coordinate the training and research schedule with the submarines. An underwater telephone would be used as a backup to the acoustic communications.

Additional information about the ICEX22 ice camp is located in the 2021 Draft Environmental Assessment/Overseas Environmental Assessment For the Ice Exercise Program. We have carefully reviewed this information and determined that activities associated with the ICEX22 ice camp, including *de minimis* acoustic communications, would not result in incidental take of marine mammals.

#### Submarine Activities

Submarine activities associated with ICEX22 generally would entail safety maneuvers, active sonar use, and exercise weapon use. The safety maneuvers and sonar use are similar to submarine activities conducted in other undersea environments and are being conducted in the Arctic to test their performance in a cold environment. The Navy anticipates the use of no more than 20 exercise weapons during ICEX22. The exercise weapons are inert (i.e., no explosives), and will be recovered by divers, who enter the water through melted holes, approximately 3–4 feet wide. Submarine training and testing involves active acoustic transmissions, which have the potential to harass marine mammals. The Navy categorizes acoustic sources into “bins” based on frequency, source level, and mode of usage (U.S. Department of the Navy, 2013). The acoustic transmissions associated with submarine training fall within bins HF1 (hull-mounted submarine sonars that produce high-frequency [greater than 10 kHz but less than 200 kHz] signals), M3 (mid-frequency [1–10 kHz] acoustic modems greater than 190 dB re 1  $\mu$ Pa), and TORP2 (heavyweight torpedo), as defined in the Navy’s Phase III at-sea environmental documentation (see Section 3.0.3.3.1, *Acoustic Stressors*, of the 2018 AFTT Final Environmental Impact Statement/Overseas Environmental Impact Statement, available at <https://www.nepa.navy.mil/AFTT-Phase-III/>). The specifics of ICEX22 submarine acoustic sources are classified, including the parameters associated with the designated bins. Details of source use for submarine training are also classified. Any ICEX-specific acoustic sources not captured under one of the at-sea bins were modeled using source-specific parameters.

Aspects of submarine training and testing activities other than active acoustic transmissions are fully analyzed within the 2021 Draft Environmental Assessment/Overseas Environmental Assessment for the Ice Exercise Program. We have carefully reviewed and discussed with the Navy these other aspects, such as vessel use and the firing of inert exercise weapons, and determined that aspects of submarine training and testing other than active acoustic transmissions would not result in take of marine mammals. These other aspects are therefore not discussed further, with the exception of potential vessel strike or exercise weapon strike, which are discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section.

#### Research Activities

Personnel and equipment proficiency testing and multiple research and development activities would be conducted as part of ICEX22. In-water device data collection and unmanned underwater vehicle testing involve active acoustic transmissions, which have the potential to harass marine mammals; however, the acoustic transmissions that would be used in ICEX22 for research activities are *de minimis*. The Navy has defined *de minimis* sources as having the following parameters: Low source levels, narrow beams, downward directed transmission, short pulse lengths, frequencies above (outside) known marine mammal hearing ranges, or some combination of these factors (U.S. Department of the Navy, 2013). NMFS reviewed the Navy’s analysis and conclusions on *de minimis* sources and finds them complete and supportable. Additional information about ICEX22 research activities is located in Table 2–1 of the 2021 Draft Environmental Assessment/Overseas Environmental Assessment For the Ice Exercise Program, and elsewhere in that document. We have carefully reviewed this information and determined that use of acoustic transmissions during research activities associated with ICEX22 would not result in incidental take of marine mammals. The possibility of vessel strikes caused by use of unmanned underwater vehicles during ICEX22 is discussed in the Potential Effects of Vessel Strike subsection within the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see

Proposed Mitigation and Proposed Monitoring and Reporting).

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS’s Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS’s website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species or stocks for which take is expected and proposed to be authorized, and summarizes information related to the population or stock, including regulatory status under the MMPA and the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS’s SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included in Table 1 as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS’s stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS’s U.S. Alaska SARs (Muto *et al.* 2021). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2020 Alaska SAR (Muto *et al.* 2021) and draft 2021 Alaska SAR (available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>).

**TABLE 1—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE IS REASONABLY LIKELY TO OCCUR**

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) <sup>1</sup>	Stock abundance (CV; N <sub>min</sub> ; most recent abundance survey) <sup>2</sup>	PBR	Annual M/SI <sup>3</sup>
Family Phocidae (earless seals): Ringed seal .....	<i>Pusa hispida</i> .....	Arctic .....	T/D; Y	171,418, <sup>4,5</sup> (N/A, 158,507; <sup>4,5</sup> 2013) .....	<sup>6</sup> 4,755	<sup>7</sup> 6,459

<sup>1</sup> ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

<sup>2</sup> NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance. In some cases, CV is not applicable.

<sup>3</sup> This value, found in NMFS’s SARs, represents annual levels of human-caused mortality (M) plus serious injury (SI) from all sources combined (e.g., commercial fisheries, ship strike).

<sup>4</sup> These estimates reflect the Bering Sea population only, as reliable abundance estimates for the Chukchi Sea and Beaufort Sea are not available.

<sup>5</sup> This is expected to be an underestimate of ringed seals in the Bering Sea, as the estimate was not adjusted for seals in the water at the time of the surveys, nor does it include ringed seals in the shorefast ice zone.

<sup>6</sup> The PBR value for this stock is based on a partial stock abundance estimate, and is therefore an underestimate for the full stock.

<sup>7</sup> The majority of the M/SI for this stock (6,454 of 6,459 animals) is a result of the Alaska Native subsistence harvest. While M/SI appears to exceed PBR, given that the reported PBR is based on a partial stock abundance estimate, and is therefore, an underestimate for the full stock, M/SI likely does not exceed PBR.

As indicated in Table 1, ringed seals (with one managed stock) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. While beluga whales (*Delphinapterus leucas*), gray whales (*Eschrichtius robustus*), bowhead whales (*Balaena mysticetus*), and spotted seals (*Phoca largha*), may occur in the ICEX22 Study Area, the temporal and/or spatial occurrence is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Bowhead whales are unlikely to occur in the ICEX22 Study Area between February and April, as they spend winter (December to March) in the northern Bering Sea and southern Chukchi Sea, and migrate north through the Chukchi Sea and Beaufort Sea during April and May (Muto *et al.* 2021). On their spring

migration, the earliest that bowhead whales reach Point Hope in the Chukchi Sea, well south of Point Barrow, is late March to mid-April (Braham *et al.* 1980). Although the ice camp location is not known with certainty, the distance between Point Barrow and the closest edge of the Ice Camp Study Area is over 200 km. The distance between Point Barrow and the closest edge of the Navy Activity Study Area is over 50 km, and the distance between Point Barrow and Point Hope is an additional 525 km (straight line distance); accordingly, bowhead whales are unlikely to occur in the ICEX22 Study Area before ICEX22 activities conclude. Beluga whales follow a migration pattern similar to bowhead whales. They typically overwinter in the Bering Sea and migrate north during the spring to the eastern Beaufort Sea where they spend the summer and early fall months (Muto

*et al.* 2021). Though the beluga whale migratory path crosses through the ICEX22 Study Area, they are unlikely to occur in the ICEX 22 Study Area between February and April. Gray whales feed primarily in the Beaufort Sea, Chukchi Sea, and Northwestern Bering Sea during the summer and fall, but migrate south to winter in Baja California lagoons (Muto *et al.* 2020). Typically, northward migrating gray whales do not reach the Bering Sea before May or June (Frost and Karpovich 2008), after the ICEX22 activities would occur, and several hundred kilometers south of the ICEX22 Study Area. Further, gray whales are primarily bottom feeders (Swartz *et al.* 2006) in water less than 60 m deep (Pike 1962). Therefore, on the rare occasion that a gray whale does overwinter in the Beaufort Sea (Stafford *et al.* 2007), we would expect an overwintering

individual to remain in shallow water over the continental shelf where it could feed. Therefore, gray whales are not expected to occur in the ICEX22 Study Area during the ICEX22 activity period. Spotted seals may also occur in the ICEX22 Study Area during summer and fall, but they are not expected to occur in the ICEX22 Study Area during the ICEX22 timeframe (Muto *et al.* 2020).

Further, while the Navy requested take of bearded seals (*Erignathus barbatus*), which do occur in the ICEX22 Study Area during the project timeframe, NMFS does not expect that bearded seals would occur in the areas near the ice camp or where submarine activities involving active acoustics would occur, and therefore incidental take is not anticipated to occur and has not been proposed for authorization. Bearded seals are not discussed further beyond the explanation provided here. The Navy anticipates that the ice camp would be established 100–200 nmi (185–370 km) north of Prudhoe Bay in water depths of 800 m or more, and also that submarine training and testing activities would occur in water depths of 800 m or more. Although bearded seals occur 20 to 100 nmi (37 to 185 km) offshore during spring (Simpkins *et al.* 2003, Bengtson *et al.* 2005), they feed heavily on benthic organisms (Hamilton *et al.* 2018; Hjelset *et al.* 1999; Fedoseev 1965), and during winter bearded seals are expected to select habitats where food is abundant and easily accessible to minimize the energy required to forage and maximize energy reserves in preparation for whelping, lactation, mating, and molting. Bearded seals are not known to dive as deep as 800 m to forage (Boveng and Cameron, 2013; Cameron and Boveng 2009; Cameron *et al.* 2010; Gjertz *et al.* 2000; Kovacs 2002) and it is highly unlikely that they would occur near the ice camp or where the submarine activities would be conducted.

In addition, the polar bear (*Ursus maritimus*) may be found in the ICEX22 Study Area. However, polar bears are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

#### *Ringed Seal*

Ringed seals are the most common pinniped in the ICEX22 Study Area and have wide distribution in seasonally and permanently ice-covered waters of the Northern Hemisphere (North Atlantic Marine Mammal Commission 2004), though the status of the Arctic stock of ringed seals is unknown (Muto *et al.* 2020). Throughout their range, ringed seals have an affinity for ice-covered waters and are well adapted to

occupying both shore-fast and pack ice (Kelly 1988c). Ringed seals can be found further offshore than other pinnipeds since they can maintain breathing holes in ice thickness greater than 2 m (Smith and Stirling 1975). Breathing holes are maintained by ringed seals' sharp teeth and claws on their fore flippers. They remain in contact with ice most of the year and use it as a platform for molting in late spring to early summer, for pupping and nursing in late winter to early spring, and for resting at other times of the year (Muto *et al.* 2020).

Ringed seals have at least two distinct types of subnivean lairs: Haul-out lairs and birthing lairs (Smith and Stirling 1975). Haul-out lairs are typically single-chambered and offer protection from predators and cold weather. Birthing lairs are larger, multi-chambered areas that are used for pupping in addition to protection from predators. Ringed seal populations pup on both land-fast ice as well as stable pack ice. Lentfer (1972) found that ringed seals north of Barrow, Alaska (which would be west of the ice camp), build their subnivean lairs on the pack ice near pressure ridges. They are also assumed to occur within the sea ice in the proposed ice camp area. Ringed seals excavate subnivean lairs in drifts over their breathing holes in the ice, in which they rest, give birth, and nurse their pups for 5–9 weeks during late winter and spring (Chapskii 1940; McLaren 1958; Smith and Stirling 1975). Snow depths of at least 50–65 centimeters (cm) are required for functional birth lairs (Kelly 1988b; Lydersen 1998; Lydersen and Gjertz 1986; Smith and Stirling 1975), and such depths typically occur only where 20–30 cm or more of snow has accumulated on flat ice and then drifted along pressure ridges or ice hummocks (Hammill 2008; Lydersen *et al.* 1990; Lydersen and Ryg 1991; Smith and Lydersen 1991). Ringed seal birthing season typically begins in March, but the majority of births occur in early April. About a month after parturition, mating begins in late April and early May.

In Alaskan waters, during winter and early spring when sea ice is at its maximal extent, ringed seals are abundant in the northern Bering Sea, Norton and Kotzebue Sounds, and throughout the Chukchi and Beaufort Seas (Frost 1985; Kelly 1988c), including in the ICEX22 Study Area. Passive acoustic monitoring (PAM) of ringed seals from a high-frequency recording package deployed at a depth of 240 m in the Chukchi Sea, 120 km north-northwest of Barrow, Alaska, detected ringed seals in the area

between mid-December and late May over a four year study (Jones *et al.* 2014). With the onset of the fall freeze, ringed seal movements become increasingly restricted and seals will either move west and south with the advancing ice pack, with many seals dispersing throughout the Chukchi and Bering Seas, or remain in the Beaufort Sea (Crawford *et al.* 2012; Frost and Lowry 1984; Harwood *et al.* 2012). Kelly *et al.* (2010a) tracked home ranges for ringed seals in the subnivean period (using shorefast ice); the size of the home ranges varied from less than 1 km<sup>2</sup> up to 27.9 km<sup>2</sup> (median of 0.62 km<sup>2</sup> for adult males and 0.65 km<sup>2</sup> for adult females). Most (94 percent) of the home ranges were less than 3 km<sup>2</sup> during the subnivean period (Kelly *et al.* 2010a). Near large polynyas, ringed seals maintain ranges up to 7,000 km<sup>2</sup> during winter and 2,100 km<sup>2</sup> during spring (Born *et al.* 2004). Some adult ringed seals return to the same small home ranges they occupied during the previous winter (Kelly *et al.* 2010a). The size of winter home ranges can vary by up to a factor of 10 depending on the amount of fast ice; seal movements were more restricted during winters with extensive fast ice, and were much less restricted where fast ice did not form at high levels (Harwood *et al.* 2015). Ringed seals may occur within the ICEX22 Study Area throughout the year and during the proposed specified activities.

#### *Critical Habitat*

On January 8, 2021, NMFS published a revised proposed rule for the Designation of Critical Habitat for the Arctic Subspecies of the Ringed Seal (86 FR 1452). This proposed rule revises NMFS' December 9, 2014, proposed designation of critical habitat for the Arctic subspecies of the ringed seal under the ESA. NMFS identified the physical and biological features essential to the conservation of the species: (1) Snow-covered sea ice habitat suitable for the formation and maintenance of subnivean birth lairs used for sheltering pups during whelping and nursing, which is defined as areas of seasonal landfast (shorefast) ice and dense, stable pack ice, excluding any bottom-fast ice extending seaward from the coastline (typically in waters less than 2 m deep), that have undergone deformation and contain snowdrifts of sufficient depth, typically at least 54 cm deep; (2) Sea ice habitat suitable as a platform for basking and molting, which is defined as areas containing sea ice of 15 percent or more concentration, excluding any bottom-fast ice extending seaward from the

coastline (typically in waters less than 2 m deep); and (3) Primary prey resources to support Arctic ringed seals, which are defined to be Arctic cod, saffron cod, shrimps, and amphipods. The revised proposed critical habitat designation comprises a specific area of marine habitat in the Bering, Chukchi, and Beaufort seas, extending from mean low water to an offshore limit within the U.S. Exclusive Economic Zone, including a portion of the ICEX22 Study Area (86 FR 1452; January 8, 2021). See the proposed ESA critical habitat rule for additional detail and a map of the proposed area.

The proposed ice camp study area was excluded from the proposed ringed seal critical habitat because the benefits of exclusion due to national security impacts outweighed the benefits of inclusion of this area (86 FR 1452; March 9, 2021). However, as stated in NMFS' second revised proposed rule for the Designation of Critical Habitat for the Arctic Subspecies of the Ringed Seal (86 FR 1452; March 9, 2021), the area proposed for exclusion contains one or more of the essential features of the Arctic ringed seal's critical habitat, although data are limited to inform NMFS' assessment of the relative value of this area to the conservation of the species. As noted above, a portion of the proposed ringed seal critical habitat overlaps the larger proposed ICEX22 Study Area. This overlap includes the portion of the Navy Activity Study Area that overlaps the U.S. EEZ. However, as described later and in more detail in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, we do not anticipate physical impacts to any marine mammal habitat as a result of the Navy's ICEX activities, including impacts to ringed seal sea ice habitat suitable as a platform for basking and molting and impacts on prey availability. Further, this proposed IHA includes mitigation measures, as described in the Proposed Mitigation

section, that would minimize or prevent impacts to sea ice habitat suitable for the formation and maintenance of subnivean birth lairs.

*Ice Seal Unusual Mortality Event*

Since June 1, 2018, elevated strandings of ringed seals, bearded seals, and spotted seals have occurred in the Bering and Chukchi Seas. This event has been declared an Unusual Mortality Event (UME). A UME is defined under the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. From June 1, 2018 to November 17, 2021, there have been at least 368 dead seals reported; 106 bearded seals, 95 ringed seals, 62 spotted seals, and 105 unidentified seals. All age classes of seals have been reported stranded, and a subset of seals have been sampled for genetics and harmful algal bloom exposure, with a few having histopathology collected. Results are pending, and the cause of the UME remains unknown.

There was a previous UME involving ice seals (which, in Alaska, includes bearded seals, ringed seals, ribbon seals, and spotted seals) from 2011 to 2016, which was most active in 2011–2012. A minimum of 657 seals were affected. The UME investigation determined that some of the clinical signs were due to an abnormal molt, but a definitive cause of death for the UME was never determined. The number of stranded ice seals involved in this current UME, and their physical characteristics, is not at all similar to the 2011–2016 UME, as the seals in the current UME are not exhibiting hair loss or skin lesions, which were a primary finding in the 2011–2016 UME. The investigation into the cause of the current UME is ongoing.

As part of the UME investigation process, NOAA has assembled an independent team of scientists to coordinate with the Working Group on

Marine Mammal Unusual Mortality Events to review the data collected, sample stranded seals, and determine the next steps for the investigation. More detailed information is available at: <https://www.fisheries.noaa.gov/alaska/marine-life-distress/2018-2021-ice-seal-unusual-mortality-event-alaska>.

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS [NMFS, 2018]

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> and <i>L. australis</i> ).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

\* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.* 2006; Kastelein *et al.* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Only ringed seals (a phocid pinniped species) have the reasonable potential to co-occur with the proposed ICEX22 activities.

### Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

#### Description of Sound Sources

Here, we first provide background information on marine mammal hearing before discussing the potential effects of the use of active acoustic sources on marine mammals.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in Hz or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the dB scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When

referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal ( $\mu\text{Pa}$ ). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1  $\mu\text{Pa}$ ). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1  $\mu\text{Pa}$ .

Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.* 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced

bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). Under sea ice, noise generated by ice deformation and ice fracturing may be caused by thermal, wind, drift, and current stresses (Roth *et al.* 2012);

- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. In the ice-covered ICEX22 Study Area, precipitation is unlikely to impact ambient sound;

- Biological: Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and

- Anthropogenic: Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.*, a passing vessel) is sometimes termed background sound, as opposed to ambient sound. Anthropogenic sources are unlikely to significantly contribute to ambient underwater noise during the late winter and early spring in the ICEX22 Study Area as most anthropogenic activities would not be active due to ice cover (*e.g.* seismic surveys, shipping; Roth *et al.* 2012).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day

(Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Underwater sounds fall into one of two general sound types: Impulsive and non-impulsive (defined in the following paragraphs). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Impulsive sound sources (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI 1986; Harris 1998; NIOSH 1998; ISO 2016; ANSI 2005) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features. There are no pulsed sound sources associated with any planned ICEx22 activities.

Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI 1995; NIOSH 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.*, rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar sources (such as those planned for use by the Navy as part of the proposed ICEx22 activities) that intentionally direct a sound signal at a target that is reflected back in order to discern physical details about the target.

Modern sonar technology includes a variety of sonar sensor and processing systems. In concept, the simplest active sonar emits sound waves, or “pings,” sent out in multiple directions, and the sound waves then reflect off of the target object in multiple directions. The sonar source calculates the time it takes for the reflected sound waves to return; this calculation determines the distance to the target object. More sophisticated

active sonar systems emit a ping and then rapidly scan or listen to the sound waves in a specific area. This provides both distance to the target and directional information. Even more advanced sonar systems use multiple receivers to listen to echoes from several directions simultaneously and provide efficient detection of both direction and distance. In general, when sonar is in use, the sonar ‘pings’ occur at intervals, referred to as a duty cycle, and the signals themselves are very short in duration. For example, sonar that emits a 1-second ping every 10 seconds has a 10 percent duty cycle. The Navy’s most powerful hull-mounted mid-frequency sonar source used in ICEx activities typically emits a 1-second ping every 50 seconds representing a 2 percent duty cycle. The Navy utilizes sonar systems and other acoustic sensors in support of a variety of mission requirements.

#### Acoustic Impacts

Please refer to the information given previously regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.* 1995; Gordon *et al.* 2004; Nowacek *et al.* 2007; Southall *et al.* 2007; Gotz *et al.* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal’s hearing range. In this section, we first describe specific manifestations of acoustic effects before providing discussion specific to the proposed activities in the next section.

Permanent Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not

fully recoverable, or temporary (TTS), in which case the animal’s hearing threshold would recover over time (Southall *et al.* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.*, tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.*, Ward 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.* 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dB above (a 40-dB threshold shift approximates PTS onset; *e.g.*, Kryter *et al.* 1966; Miller, 1974) those inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.*, Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least six dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level (SEL) thresholds are 15 to 20 dB higher than TTS cumulative SEL thresholds (Southall *et al.* 2007).

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to



serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present.

Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale, harbor porpoise (*Phocoena phocoena*), and Yangtze finless porpoise (*Neophocoena asiatorientalis*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal (*Phoca vitulina*), and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted and ringed seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), and Finneran (2015).

Behavioral effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Weilgart, 2007; Archer *et al.* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source,

context, and numerous other factors (Ellison *et al.* 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a “progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,” rather than as, more generally, moderation in response to human disturbance (Bejder *et al.* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.* 1995; NRC 2003; Wartzok *et al.* 2003). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.* 1997; Finneran *et al.* 2003). Observed responses of wild marine mammals to loud impulsive sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; see also Richardson *et al.* 1995; Nowacek *et al.* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder 2007; Weilgart 2007; NRC 2003).

However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*, Frankel and Clark 2000; Costa *et al.* 2003; Ng and Leung, 2003; Nowacek *et al.* 2004; Goldbogen *et al.* 2013). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.*, foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.* 2001; Nowacek *et al.* 2004; Madsen *et al.* 2006; Yazvenko *et al.* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound

exposure (e.g., Kastelein *et al.* 2001, 2005b, 2006; Gailey *et al.* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.* 2000; Fristrup *et al.* 2003; Foote *et al.* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (e.g., Bowles *et al.* 1994; Goold, 1996; Morton and Symonds, 2002; Gailey *et al.* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (e.g., Blackwell *et al.* 2004; Bejder *et al.* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (e.g., directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England

2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (i.e., when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (e.g., Beauchamp and Livoreil, 1997; Fritz *et al.* 2002; Purser and Radford 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (e.g., decline in body condition) and subsequent reduction in reproductive success, survival, or both (e.g., Harrington and Veitch 1992; Daan *et al.* 1996; Bradshaw *et al.* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

For non-impulsive sounds (i.e., similar to the sources used during the proposed specified activities), data suggest that exposures of pinnipeds to received levels between 90 and 140 dB re 1  $\mu$ Pa do not elicit strong behavioral responses; no data were available for exposures at higher received levels for Southall *et al.* (2007) to include in the severity scale analysis. Reactions of

harbor seals were the only available data for which the responses could be ranked on the severity scale. For reactions that were recorded, the majority (17 of 18 individuals/groups) were ranked on the severity scale as a 4 (defined as moderate change in movement, brief shift in group distribution, or moderate change in vocal behavior) or lower; the remaining response was ranked as a 6 (defined as minor or moderate avoidance of the sound source). Additional data on hooded seals (*Cystophora cristata*) indicate avoidance responses to signals above 160–170 dB re 1  $\mu$ Pa (Kvadsheim *et al.* 2010), and data on gray seals (*Halichoerus grypus*) and harbor seals indicate avoidance response at received levels of 135–144 dB re 1  $\mu$ Pa (Götz *et al.* 2010). In each instance where food was available, which provided the seals motivation to remain near the source, habituation to the signals occurred rapidly. In the same study, it was noted that habituation was not apparent in wild seals where no food source was available (Götz *et al.* 2010). This implies that the motivation of the animal is necessary to consider in determining the potential for a reaction. In one study that aimed to investigate the under-ice movements and sensory cues associated with under-ice navigation of ice seals, acoustic transmitters (60–69 kHz at 159 dB re 1  $\mu$ Pa at 1 m) were attached to ringed seals (Wartzok *et al.* 1992a; Wartzok *et al.* 1992b). An acoustic tracking system then was installed in the ice to receive the acoustic signals and provide real-time tracking of ice seal movements. Although the frequencies used in this study are at the upper limit of ringed seal hearing, the ringed seals appeared unaffected by the acoustic transmissions, as they were able to maintain normal behaviors (e.g., finding breathing holes).

Seals exposed to non-impulsive sources with a received sound pressure level within the range of calculated exposures for ICES activities (142–193 dB re 1  $\mu$ Pa), have been shown to change their behavior by modifying diving activity and avoidance of the sound source (Götz *et al.* 2010; Kvadsheim *et al.* 2010). Although a minor change to a behavior may occur as a result of exposure to the sources in the proposed specified activities, these changes would be within the normal range of behaviors for the animal (e.g., the use of a breathing hole further from the source, rather than one closer to the source, would be within the normal range of behavior; Kelly *et al.* 1988).

Adult ringed seals spend up to 20 percent of the time in subnivean lairs during the winter season (Kelly *et al.*

2010a). Ringed seal pups spend about 50 percent of their time in the lair during the nursing period (Lydersen and Hammill 1993). During the warm season ringed seals haul out on the ice. In a study of ringed seal haulout activity by Born *et al.* (2002), ringed seals spent 25–57 percent of their time hauled out in June, which is during their molting season. Ringed seal lairs are typically used by individual seals (haulout lairs) or by a mother with a pup (birthing lairs); large lairs used by many seals for hauling out are rare (Smith and Stirling 1975). If the non-impulsive acoustic transmissions are heard and are perceived as a threat, ringed seals within subnivean lairs could react to the sound in a similar fashion to their reaction to other threats, such as polar bears (their primary predators). Responses of ringed seals to a variety of human-induced sounds (*e.g.*, helicopter noise, snowmobiles, dogs, people, and seismic activity) have been variable; some seals entered the water and some seals remained in the lair. However, according to Kelly *et al.* (1988), in all instances in which observed seals departed lairs in response to noise disturbance, they subsequently reoccupied the lair.

Ringed seal mothers have a strong bond with their pups and may physically move their pups from the birth lair to an alternate lair to avoid predation, sometimes risking their lives to defend their pups from potential predators (Smith 1987). If a ringed seal mother perceives the proposed acoustic sources as a threat, the network of multiple birth and haulout lairs allows the mother and pup to move to a new lair (Smith and Hammill 1981; Smith and Stirling 1975). The acoustic sources from these proposed specified activities are not likely to impede a ringed seal from finding a breathing hole or lair, as captive seals have been found to primarily use vision to locate breathing holes and no effect to ringed seal vision would occur from the acoustic disturbance (Elsner *et al.* 1989; Wartzok *et al.* 1992a). It is anticipated that a ringed seal would be able to relocate to a different breathing hole relatively easily without impacting their normal behavior patterns.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.*, Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the

potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.*, Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and “distress” is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.*, Holberton *et al.* 1996; Hood *et al.* 1998; Jessop *et al.* 2003; Krausman *et al.* 2004; Lankford *et al.* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.* 2002b) and, more rarely, studied in wild populations (*e.g.*, Romano *et al.* 2002a). These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.*, snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.*, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.*, signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.*, sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is anthropogenic, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TTS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.*, Clark *et al.* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.*, Miller *et al.* 2000; Foote *et al.* 2004; Parks *et al.* 2007b; Di Iorio and Clark, 2009; Holt *et al.* 2009). Masking can be reduced in

situations where the signal and noise come from different directions (Richardson *et al.* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.*, Erbe 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.*, Branstetter *et al.* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.*, from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential Effects of Sonar on Prey—Ringed seals feed on marine invertebrates and fish. Marine invertebrates occur in the world's oceans, from warm shallow waters to cold deep waters, and are the dominant animals in all habitats of the ICEX22 Study Area. Although most species are found within the benthic zone, marine invertebrates can be found in all zones (sympagic (within the sea ice), pelagic (open ocean), or benthic (bottom dwelling)) of the Beaufort Sea (Josefson *et al.* 2013). The diverse range of species include oysters, crabs, worms, ghost shrimp, snails, sponges, sea fans, isopods, and stony corals (Chess and Hobson 1997; Dugan *et al.* 2000; Proctor *et al.* 1980).

Hearing capabilities of invertebrates are largely unknown (Lovell *et al.* 2005; Popper and Schilt 2008). Outside of studies conducted to test the sensitivity of invertebrates to vibrations, very little is known on the effects of anthropogenic underwater noise on invertebrates (Edmonds *et al.* 2016). While data are limited, research suggests that some of the major cephalopods and decapods may have limited hearing capabilities (Hanlon 1987; Offutt 1970), and may hear only low-frequency (less than 1 kHz) sources (Offutt 1970), which is most likely within the frequency band of biological signals (Hill 2009). In a review of crustacean sensitivity of high amplitude underwater noise by

Edmonds *et al.* (2016), crustaceans may be able to hear the frequencies at which they produce sound, but it remains unclear which noises are incidentally produced and if there are any negative effects from masking them. Acoustic signals produced by crustaceans range from low frequency rumbles (20–60 Hz) to high frequency signals (20–55 kHz) (Henninger and Watson 2005; Patek and Caldwell 2006; Staaterman *et al.* 2016). Aquatic invertebrates that can sense local water movements with ciliated cells include cnidarians, flatworms, segmented worms, urochordates (tunicates), mollusks, and arthropods (Budelmann 1992a, 1992b; Popper *et al.* 2001). Some aquatic invertebrates have specialized organs called statocysts for determination of equilibrium and, in some cases, linear or angular acceleration. Statocysts allow an animal to sense movement and may enable some species, such as cephalopods and crustaceans, to be sensitive to water particle movements associated with sound (Goodall *et al.* 1990; Hu *et al.* 2009; Kaifu *et al.* 2008; Montgomery *et al.* 2006; Popper *et al.* 2001; Roberts and Breithaupt 2016; Salmon 1971). Because any acoustic sensory capabilities, if present at all, are limited to detecting water motion, and water particle motion near a sound source falls off rapidly with distance, aquatic invertebrates are probably limited to detecting nearby sound sources rather than sound caused by pressure waves from distant sources.

Studies of sound energy effects on invertebrates are few, and identify only behavioral responses. Non-auditory injury, PTS, TTS, and masking studies have not been conducted for invertebrates. Both behavioral and auditory brainstem response studies suggest that crustaceans may sense frequencies up to 3 kHz, but best sensitivity is likely below 200 Hz (Goodall *et al.* 1990; Lovell *et al.* 2005; Lovell *et al.* 2006). Most cephalopods likely sense low-frequency sound below 1 kHz, with best sensitivities at lower frequencies (Budelmann 2010; Mooney *et al.* 2010; Offutt 1970). A few cephalopods may sense higher frequencies up to 1,500 Hz (Hu *et al.* 2009).

It is expected that most marine invertebrates would not sense the frequencies of the sonar associated with the proposed specified activities. Most marine invertebrates would not be close enough to active sonar systems to potentially experience impacts to sensory structures. Any marine invertebrate capable of sensing sound may alter its behavior if exposed to sonar. Although acoustic transmissions produced during the proposed specified

activities may briefly impact individuals, intermittent exposures to sonar are not expected to impact survival, growth, recruitment, or reproduction of widespread marine invertebrate populations.

The fish species located in the ICEX22 Study Area include those that are closely associated with the deep ocean habitat of the Beaufort Sea. Nearly 250 marine fish species have been described in the Arctic, excluding the larger parts of the sub-Arctic Bering, Barents, and Norwegian Seas (Mecklenburg *et al.* 2011). However, only about 30 are known to occur in the Arctic waters of the Beaufort Sea (Christiansen and Reist 2013). Largely because of the difficulty of sampling in remote, ice-covered seas, many high-Arctic fish species are known only from rare or geographically patchy records (Mecklenburg *et al.* 2011). Aquatic systems of the Arctic undergo extended seasonal periods of ice cover and other harsh environmental conditions. Fish inhabiting such systems must be biologically and ecologically adapted to surviving such conditions. Important environmental factors that Arctic fish must contend with include reduced light, seasonal darkness, ice cover, low biodiversity, and low seasonal productivity.

All fish have two sensory systems to detect sound in the water: The inner ear, which functions very much like the inner ear in other vertebrates, and the lateral line, which consists of a series of receptors along the fish's body (Popper and Fay 2010; Popper *et al.* 2014). The inner ear generally detects relatively higher-frequency sounds, while the lateral line detects water motion at low frequencies (below a few hundred Hz) (Hastings and Popper 2005). Lateral line receptors respond to the relative motion between the body surface and surrounding water; this relative motion, however, only takes place very close to sound sources and most fish are unable to detect this motion at more than one to two body lengths distance away (Popper *et al.* 2014). Although hearing capability data only exist for fewer than 100 of the approximately 32,000 fish species known to exist, current data suggest that most species of fish detect sounds from 50 to 1,000 Hz, with few fish hearing sounds above 4 kHz (Popper 2008). It is believed that most fish have their best hearing sensitivity from 100 to 400 Hz (Popper 2003). Permanent hearing loss has not been documented in fish. A study by Halvorsen *et al.* (2012) found that for temporary hearing loss or similar negative impacts to occur, the noise needed to be within the fish's individual hearing frequency range;

external factors, such as developmental history of the fish or environmental factors, may result in differing impacts to sound exposure in fish of the same species. The sensory hair cells of the inner ear in fish can regenerate after they are damaged, unlike in mammals where sensory hair cells loss is permanent (Lombarte *et al.* 1993; Smith *et al.* 2006). As a consequence, any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (Smith *et al.* 2006), and no permanent loss of hearing in fish would result from exposure to sound.

Fish species in the ICEx22 Study Area are expected to hear the low-frequency sources associated with the proposed specified activities, but most are not expected to detect the higher-frequency sounds. Only a few fish species are able to detect mid-frequency sonar above 1 kHz and could have behavioral reactions or experience auditory masking during these activities. These effects are expected to be transient, and long-term consequences for the population are not expected. Fish with hearing specializations capable of detecting high-frequency sounds are not expected to be within the ICEx22 Study Area. If hearing specialists were present, they would have to be in close vicinity to the source to experience effects from the acoustic transmission. Human-generated sound could alter the behavior of a fish in a manner that would affect its way of living, such as where it tries to locate food or how well it can locate a potential mate; behavioral responses to loud noise could include a startle response, such as the fish swimming away from the source, the fish “freezing” and staying in place, or scattering (Popper 2003). Auditory masking could also interfere with a fish’s ability to hear biologically relevant sounds, inhibiting the ability to detect both predators and prey, and impacting schooling, mating, and navigating (Popper 2003). If an individual fish comes into contact with low-frequency acoustic transmissions and is able to perceive the transmissions, they are expected to exhibit short-term behavioral reactions, when initially exposed to acoustic transmissions, which would not significantly alter breeding, foraging, or populations. Overall effects to fish from ICEx22 active sonar sources would be localized, temporary, and infrequent.

**Potential Effects of Vessel Strike—**Because ICEx22 would occur only when there is ice coverage and conditions are appropriate to establish an ice camp on

an ice floe, no ships or smaller boats would be involved in the activity. Vessel use would be limited to submarines and unmanned underwater vehicles (hereafter referred to together as “vessels” unless noted separately). The potential for vessel strike during ICEx22 would therefore only arise from the use of submarines during training and testing activities, and the use of unmanned underwater vehicles during research activities. Depths at which vessels would operate during ICEx22 would overlap with known dive depths of ringed seals, which have been recorded to 300 m in depth (Gjertz *et al.* 2000; Lydersen 1991). Few authors have specifically described the responses of pinnipeds to vessels, and most of the available information on reactions to boats concerns pinnipeds hauled out on land or ice. No information is available on potential responses to submarines or unmanned underwater vehicles. Brueggeman *et al.* (1992) stated ringed seals hauled out on the ice showed short-term escape reactions when they were within 0.25–0.5 km from a vessel; ringed seals would likely show similar reactions to submarines and unmanned underwater vehicles, decreasing the likelihood of vessel strike during ICEx22 activities.

Dating back more than 20 years and for as long as it has kept records, the Navy has no records of individual pinnipeds being struck by a vessel as a result of Navy activities and, further, the smaller size and maneuverability of pinnipeds make a vessel strike unlikely. Also, NMFS has never received any reports indicating that pinnipeds have been struck by vessels of any type. Review of additional sources of information in the form of worldwide ship strike records shows little evidence of strikes of pinnipeds from the shipping sector. Further, a review of seal stranding data from Alaska found that during 2020, 9 ringed seal strandings were recorded by the Alaska Marine Mammal Stranding Network. Within the Arctic region of Alaska, 7 ringed seal strandings were recorded. Of the 9 strandings reported in Alaska (all regions included), none were found to be caused by vessel collisions (Savage 2021).

Vessel speed, size, and mass are all important factors in determining both the potential likelihood and impacts of a vessel strike to marine mammals (Conn and Silber, 2013; Gende *et al.* 2011; Silber *et al.* 2010; Vanderlaan and Taggart, 2007; Wiley *et al.* 2016). When submerged, submarines are generally slow moving (to avoid detection) and therefore marine mammals at depth with a submarine are likely able to

avoid collision with the submarine. For most of the research and training and testing activities during the specified activity, submarine and unmanned underwater vehicle speeds would not typically exceed 10 knots during the time spent within the ICEx22 Study Area, which would lessen the already extremely unlikely chance of collisions with marine mammals, specifically ringed seals.

Based on consideration of all this information, NMFS does not anticipate incidental take of marine mammals by vessel strike from submarines or unmanned underwater vehicles.

**Potential Effects of Exercise Weapon Strike—**As noted in the *Detailed Description of Specific Activity* section, the Navy may use up to 20 inert exercise weapons in ICEx22. While the details of the proposed exercise weapon exercises are classified, given the limited potential number of exercise weapons deployed during the exercise window, and the low density of ringed seals in the project area during this time, NMFS does not anticipate incidental take of marine mammals by exercise weapon strike.

**Effects of Acoustics on Physical and Foraging Habitat—**Unless the sound source is stationary and/or continuous over a long duration in one area, neither of which applies to ICEx22 activities, the effects of the introduction of sound into the environment are generally considered to have a less severe impact on marine mammal habitat compared to any physical alteration of the habitat. Acoustic exposures are not expected to result in long-term physical alteration of the water column or bottom topography as the occurrences are of limited duration and would occur intermittently. Acoustic transmissions also would have no structural impact to subnivean lairs in the ice. Furthermore, since ice dampens acoustic transmissions (Richardson *et al.* 1995) the level of sound energy that reaches the interior of a subnivean lair would be less than that ensonifying water under surrounding ice. For these reasons, it is unlikely that the Navy’s acoustic activities in the ICEx22 Study Area would have any effect on marine mammal habitat, including habitat that was considered for designation as ESA critical habitat in the current ESA rulemaking process.

**Non-acoustic Impacts—**Deployment of the ice camp could potentially affect ringed seal habitat by physically damaging or crushing subnivean lairs, which could potentially result in ringed seal injury or mortality. March 1 is generally expected to be the onset of ice seal lairing season, and ringed seals

typically construct lairs near pressure ridges. As described in the Proposed Mitigation section, the ice camp and runway would be established on a combination of first-year ice and multi-year ice without pressure ridges, which would minimize the possibility of physical impacts to subnivean lairs and habitat suitable for lairs. Ice camp deployment would begin mid-February, and be gradual, with activity increasing over the first five days. So in addition, this schedule would discourage seals from establishing birthing lairs in or near the ice camp, and would allow ringed seals to relocate outside of the ice camp area as needed, though both scenarios are unlikely as described below in this section. Personnel on on-ice vehicles would observe for marine mammals, and would follow established routes when available, to avoid potential disturbance of lairs and habitat suitable for lairs. Personnel on foot and

operating on-ice vehicles would avoid deep snow drifts near pressure ridges, also to avoid potential lairs and habitat suitable for lairs. Implementation of these measures are expected to prevent ringed seal lairs from being crushed or damaged during ICEX22 activities, and are expected to minimize any other potential impacts to sea ice habitat suitable for the formation of lairs. Given the proposed mitigation requirements, we also do not anticipate ringed seal injury or mortality as a result of damage to subnivean lairs.

ICEX22 personnel would be actively conducting testing and training operations on the sea ice and would travel around the camp area, including the runway, on snowmobiles. Although the Navy does not anticipate observing any seals on the ice given the lack of observations during previous ice exercises (U.S. Navy, 2020), it is possible that the presence of active

humans could behaviorally disturb ringed seals that are in lairs or on the ice. For example, if a seal is present and would have otherwise built a lair in the area of the ice camp, it could be displaced, or a seal may choose to relocate to a different, existing lair outside of the ice camp area. Displacement of seal lair construction or relocation to existing lairs outside of the ice camp area is unlikely, given the low average density of structures (the average ringed seal ice structure density in the vicinity of Prudhoe Bay, Alaska is 1.58 structures per km<sup>2</sup> (Table 3)), the lack of previous ringed seal observations on the ice during ICEX activities, and proposed mitigation requirements that would require the Navy to construct the ice camp and runway on first-year or multiyear ice without pressure ridges and would require personnel to avoid areas of deep snow drift or pressure ridges.

TABLE 3—RINGED SEAL ICE STRUCTURE DENSITY IN THE VICINITY OF THE PRUDHOE BAY, ALASKA

Year	Ice structure density (structures per km <sup>2</sup> )	Source
1982 .....	3.6	Frost and Burns 1989.
1983 .....	0.81	Kelly <i>et al.</i> 1986.
1999 .....	0.71	Williams <i>et al.</i> 2001.
2000 .....	1.2	Williams <i>et al.</i> 2001.
Average Density .....	1.58	

Given the required mitigation measures and the low density of ringed seals anticipated in the Ice Camp Study Area during ICEX22, we do not anticipate behavioral disturbance of ringed seals due to human presence.

The Navy’s activities would occur prior to the late spring to early summer “basking period,” which occurs between abandonment of the subnivean lairs and melting of the seasonal sea ice, and is when the seals undergo their annual molt (Kelly *et al.* 2010b). Given that the ice camp would be demobilized prior to the basking period, and the remainder of the Navy’s activities occur below the sea ice, impacts to sea ice habitat suitable as a platform for basking and molting are not anticipated to result from the Navy’s ICEX22 activities.

Our preliminary determination of potential effects to the physical environment includes minimal possible impacts to marine mammals and their habitat from camp operation or deployment activities, given the proposed mitigation and the timing of the Navy’s proposed activities. In addition, given the relatively short duration of submarine testing and training activities, the relatively small area that would be affected, and the lack

of impacts to physical or foraging habitat, the proposed specified activities are not likely to have an adverse effect on prey species or marine mammal habitat, other than potential localized, temporary, and infrequent effects to fish as discussed above. Therefore, any impacts to ringed seals and their habitat, as discussed above in this section, are not expected to cause significant or long-term consequences for individual ringed seals or the population. Please see the Negligible Impact Analysis and Determination section for additional discussion regarding the likely impacts of the Navy’s activities on ringed seals, including the reproductive success or survivorship of individual ringed seals, and how those impacts on individuals are likely to impact the species or stock.

**Estimated Take**

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform NMFS’ analysis for the negligible impact determination.

Harassment is the only type of take expected to result from these activities. For this military readiness activity, the MMPA defines “harassment” as (i) Any act that injures or has the significant

potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where the behavioral patterns are abandoned or significantly altered (Level B harassment).

Authorized takes for the Navy’s ICEX22 activities would be by Level B harassment only, in the form of disruption of behavioral patterns and/or TTS for individual marine mammals resulting from exposure to acoustic transmissions. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. As described previously, no mortality or serious injury is anticipated or proposed to be authorized for this activity. Below we describe how the incidental take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally disturbed or incur some degree of permanent

hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. For this proposed IHA, the Navy employed a sophisticated model known as the Navy Acoustic Effects Model (NAEMO) to assess the estimated impacts of underwater sound.

#### Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally disturbed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

*Level B Harassment by behavioral disturbance for non-explosive sources*—In coordination with NMFS, the Navy developed behavioral thresholds to support environmental analyses for the Navy's testing and training military readiness activities utilizing active sonar sources; these behavioral harassment thresholds are used here to evaluate the potential effects of the active sonar components of the proposed specified activities. The behavioral response of a marine mammal to an anthropogenic sound will depend on the frequency, duration, temporal pattern, and amplitude of the sound as well as the animal's prior experience with the sound and the context in which the sound is encountered (*i.e.*, what the animal is doing at the time of the exposure). The distance from the sound source and whether it is perceived as approaching or moving away can also affect the way an animal responds to a sound (Wartzok *et al.* 2003). For marine mammals, a review of responses to anthropogenic sound was first conducted by Richardson *et al.* (1995). Reviews by Nowacek *et al.* (2007) and Southall *et al.* (2007) address studies conducted since 1995 and focus on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated.

Multi-year research efforts have conducted sonar exposure studies for odontocetes and mysticetes (Miller *et al.* 2012; Sivle *et al.* 2012). Several studies with captive animals have provided data under controlled circumstances for odontocetes and pinnipeds (Houser *et al.* 2013a; Houser *et al.* 2013b). Moretti *et al.* (2014) published a beaked whale dose-response curve based on PAM of beaked whales during Navy training activity at Atlantic Underwater Test and Evaluation Center during actual Anti-

Submarine Warfare exercises. This new information necessitated the update of the behavioral response criteria for the Navy's environmental analyses.

Southall *et al.* (2007) synthesized data from many past behavioral studies and observations to determine the likelihood of behavioral reactions at specific sound levels. While in general, the louder the sound source the more intense the behavioral response, it was clear that the proximity of a sound source and the animal's experience, motivation, and conditioning were also critical factors influencing the response (Southall *et al.* 2007). After examining all of the available data, the authors felt that the derivation of thresholds for behavioral response based solely on exposure level was not supported because context of the animal at the time of sound exposure was an important factor in estimating response. Nonetheless, in some conditions, consistent avoidance reactions were noted at higher sound levels depending on the marine mammal species or group, allowing conclusions to be drawn. Phocid seals showed avoidance reactions at or below 190 dB re 1  $\mu$ Pa at 1 m; thus, seals may actually receive levels adequate to produce TTS before avoiding the source.

The Navy's Phase III proposed pinniped behavioral threshold was updated based on controlled exposure experiments on the following captive animals: Hooded seal, gray seal, and California sea lion (Götz *et al.* 2010; Houser *et al.* 2013a; Kvadsheim *et al.* 2010). Overall exposure levels were 110–170 dB re 1  $\mu$ Pa for hooded seals, 140–180 dB re 1  $\mu$ Pa for gray seals, and 125–185 dB re 1  $\mu$ Pa for California sea lions; responses occurred at received levels ranging from 125 to 185 dB re 1  $\mu$ Pa. However, the means of the response data were between 159 and 170 dB re 1  $\mu$ Pa. Hooded seals were exposed to increasing levels of sonar until an avoidance response was observed, while the grey seals were exposed first to a single received level multiple times, then an increasing received level. Each individual California sea lion was exposed to the same received level ten times. These exposure sessions were combined into a single response value, with an overall response assumed if an animal responded in any single session. Because these data represent a dose-response type relationship between received level and a response, and because the means were all tightly clustered, the Bayesian biphasic Behavioral Response Function for pinnipeds most closely resembles a traditional sigmoidal dose-response function at the upper received levels

and has a 50 percent probability of response at 166 dB re 1  $\mu$ Pa. Additionally, to account for proximity to the source discussed above and based on the best scientific information, a conservative distance of 10 km is used beyond which exposures would not constitute a take under the military readiness definition of Level B harassment. The Navy proposed, and NMFS concurs with, the use of this dose response function to predict behavioral harassment of pinnipeds for this activity.

*Level A harassment and Level B harassment by threshold shift for non-explosive sources*—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0; Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

These thresholds were developed by compiling the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

The Navy's PTS/TTS analysis begins with mathematical modeling to predict the sound transmission patterns from Navy sources, including sonar. These data are then coupled with marine species distribution and abundance data to determine the sound levels likely to be received by various marine species. These criteria and thresholds are applied to estimate specific effects that animals exposed to Navy-generated sound may experience. For weighting function derivation, the most critical data required are TTS onset exposure levels as a function of exposure frequency. These values can be estimated from published literature by examining TTS as a function of sound exposure level (SEL) for various frequencies.

To estimate TTS onset values, only TTS data from behavioral hearing tests were used. To determine TTS onset for each subject, the amount of TTS observed after exposures with different SPLs and durations were combined to create a single TTS growth curve as a function of SEL. The use of (cumulative)

SEL is a simplifying assumption to accommodate sounds of various SPLs, durations, and duty cycles. This is referred to as an “equal energy” approach, since SEL is related to the energy of the sound and this approach assumes exposures with equal SEL result in equal effects, regardless of the duration or duty cycle of the sound. It is well known that the equal energy rule will over-estimate the effects of intermittent noise, since the quiet periods between noise exposures will allow some recovery of hearing compared to noise that is continuously

present with the same total SEL (Ward 1997). For continuous exposures with the same SEL but different durations, the exposure with the longer duration will also tend to produce more TTS (Finneran *et al.* 2010; Kastak *et al.* 2007; Mooney *et al.* 2009a).

As in previous acoustic effects analysis (Finneran and Jenkins 2012; Southall *et al.* 2007), the shape of the PTS exposure function for each species group is assumed to be identical to the TTS exposure function for each group. A difference of 20 dB between TTS onset and PTS onset is used for all

marine mammals including pinnipeds. This is based on estimates of exposure levels actually required for PTS (*i.e.*, 40 dB of TTS) from the marine mammal TTS growth curves, which show differences of 13 to 37 dB between TTS and PTS onset in marine mammals. Details regarding these criteria and thresholds can be found in NMFS’ Technical Guidance (NMFS 2018).

Table 4 below provides the weighted criteria and thresholds used in this analysis for estimating quantitative acoustic exposures of marine mammals from the proposed specified activities.

TABLE 4—ACOUSTIC THRESHOLDS IDENTIFYING THE ONSET OF BEHAVIORAL DISTURBANCE, TTS, AND PTS FOR NON-IMPULSIVE SOUND SOURCES <sup>1</sup>

Functional hearing group	Species	Behavioral criteria	Physiological criteria	
			TTS threshold SEL (weighted)	PTS threshold SEL (weighted)
Phocid Pinnipeds (Underwater) .....	Ringed seal .....	Pinniped Dose Response Function <sup>2</sup> .....	181 dB SEL cumulative ...	201 dB SEL cumulative.

<sup>1</sup> The threshold values provided are assumed for when the source is within the animal’s best hearing sensitivity. The exact threshold varies based on the overlap of the source and the frequency weighting.

<sup>2</sup> See Figure 6–1 in the Navy’s IHA application.

Note: SEL thresholds in dB re: 1 μPa<sup>2</sup> s.

**Quantitative Modeling**

The Navy performed a quantitative analysis to estimate the number of marine mammals that could be harassed by the underwater acoustic transmissions during the proposed specified activities. Inputs to the quantitative analysis included marine mammal density estimates, marine mammal depth occurrence distributions (U.S. Department of the Navy, 2017), oceanographic and environmental data, marine mammal hearing data, and criteria and thresholds for levels of potential effects.

The density estimate used to estimate take is derived from habitat-based modeling by Kaschner *et al.* (2006) and Kaschner (2004). The area of the Arctic where the proposed specified activities would occur (100–200 nmi north of Prudhoe Bay, Alaska) has not been surveyed in a manner that supports quantifiable density estimation of marine mammals. In the absence of empirical survey data, information on known or inferred associations between marine habitat features and (the likelihood of) the presence of specific species have been used to predict densities using model-based approaches. These habitat suitability models include relative environmental suitability (RES) models. Habitat suitability models can be used to understand the possible extent and relative expected concentration of a marine species distribution. These models are derived from an assessment of the species occurrence in association

with evaluated environmental explanatory variables that results in defining the RES suitability of a given environment. A fitted model that quantitatively describes the relationship of occurrence with the environmental variables can be used to estimate unknown occurrence in conjunction with known habitat suitability. Abundance can thus be estimated for each RES value based on the values of the environmental variables, providing a means to estimate density for areas that have not been surveyed. Use of the Kaschner’s RES model resulted in a value of 0.3957 ringed seals per km<sup>2</sup> in the cold season (defined as December through May).

The quantitative analysis consists of computer modeled estimates and a post-model analysis to determine the number of potential animal exposures. The model calculates sound energy propagation from the proposed sonars, the sound received by animat (virtual animal) dosimeters representing marine mammals distributed in the area around the modeled activity, and whether the sound received by a marine mammal exceeds the thresholds for effects.

The Navy developed a set of software tools and compiled data for estimating acoustic effects on marine mammals without consideration of behavioral avoidance or Navy’s standard mitigations (Lookouts, safety zones, avoidance zones, etc.). These tools and data sets are integral components of NAEMO. In NAEMO, animats are distributed non-uniformly based on

species-specific density, depth distribution, and group size information, and animats record energy received at their location in the water column. A fully three-dimensional environment is used for calculating sound propagation and animat exposure in NAEMO. Site-specific bathymetry, sound speed profiles, wind speed, and bottom properties are incorporated into the propagation modeling process. NAEMO calculates the likely propagation for various levels of energy (sound or pressure) resulting from each source used during the training or testing event.

NAEMO then records the energy received by each animat within the energy footprint of the event and calculates the number of animats having received levels of energy exposures that fall within defined impact thresholds. Predicted effects on the animats within a scenario are then tallied and the highest order effect (based on severity of criteria; *e.g.*, PTS over TTS) predicted for a given animat is assumed. Each scenario or each 24-hour period for scenarios lasting greater than 24 hours is independent of all others, and therefore, the same individual marine animal could be impacted during each independent scenario or 24-hour period. In a few instances for the modeling of the specified activities here, although the activities themselves all occur within the ICEX22 Study Area, sound may propagate beyond the boundary of the ICEX22 Study Area. Any exposures occurring outside the boundary of the



study area are counted as if they occurred within the ICEX22 Study Area boundary. NAEMO provides the initial estimated impacts on marine species with a static horizontal distribution.

There are limitations to the data used in the acoustic effects model, and the results must be interpreted within this context. While the most accurate data and input assumptions have been used in the modeling, when there is a lack of definitive data to support an aspect of the modeling, modeling assumptions believed to overestimate the number of exposures have been chosen:

- Animats are modeled as being underwater, stationary, and facing the source and therefore always predicted to receive the maximum sound level (*i.e.*, no porpoising or pinnipeds' heads above water);
- Animats do not move horizontally (but do change their position vertically within the water column), which may overestimate physiological effects such as hearing loss, especially for slow moving or stationary sound sources in the model;
- Animats are stationary horizontally and therefore do not avoid the sound

source, unlike in the wild where animals would most often avoid exposures at higher sound levels, especially those exposures that may result in PTS;

- Multiple exposures within any 24-hour period are considered one continuous exposure for the purposes of calculating the temporary or permanent hearing loss, because there are not sufficient data to estimate a hearing recovery function for the time between exposures; and
- Mitigation measures that would be implemented were not considered in the model. In reality, sound-producing activities would be reduced, stopped, or delayed if marine mammals are detected by submarines via PAM.

Because of these inherent model limitations and simplifications, model-estimated results must be further analyzed, considering such factors as the range to specific effects, avoidance, and typically the likelihood of successfully implementing mitigation measures. This analysis uses a number of factors in addition to the acoustic model results to predict effects on marine mammals.

For non-impulsive sources, NAEMO calculates the sound pressure level (SPL) and sound exposure level (SEL) for each active emission during an event. This is done by taking the following factors into account over the propagation paths: Bathymetric relief and bottom types, sound speed, and attenuation contributors such as absorption, bottom loss, and surface loss. Platforms such as a ship using one or more sound sources are modeled in accordance with relevant vehicle dynamics and time durations by moving them across an area whose size is representative of the training event's operational area. Table 5 provides range to effects for active acoustic sources proposed for ICEX22 to phocid pinniped-specific criteria. Phocids within these ranges would be predicted to receive the associated effect. Range to effects is important information in not only predicting acoustic impacts, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects, to marine mammals.

TABLE 5—RANGE TO BEHAVIORAL DISTURBANCE, TTS, AND PTS IN THE ICEX22 STUDY AREA

Source/exercise	Range to effects (m)		
	Behavioral disturbance	TTS	PTS
Submarine Exercise .....	<sup>a</sup> 10,000	3,025	130

<sup>a</sup> Empirical evidence has not shown responses to sonar that would constitute take beyond a few km from an acoustic source, which is why NMFS and the Navy conservatively set a distance cutoff of 10 km. Regardless of the source level at that distance, take is not estimated to occur beyond 10 km from the source.

As discussed above, within NAEMO, animals do not move horizontally or react in any way to avoid sound. Furthermore, mitigation measures that are implemented during training or testing activities that reduce the likelihood of physiological impacts are not considered in quantitative analysis. Therefore, the current model overestimates acoustic impacts, especially physiological impacts near the sound source. The behavioral criteria used as a part of this analysis

acknowledges that a behavioral reaction is likely to occur at levels below those required to cause hearing loss (TTS or PTS). At close ranges and high sound levels approaching those that could cause PTS, avoidance of the area immediately around the sound source is the assumed behavioral response for most cases.

In previous environmental analyses, the Navy has implemented analytical factors to account for avoidance behavior and the implementation of mitigation measures. The application of

avoidance and mitigation factors has only been applied to model-estimated PTS exposures given the short distance over which PTS is estimated. Given that no PTS exposures were estimated during the modeling process for these proposed specified activities, the implementation of avoidance and mitigation factors were not included in this analysis.

Table 6 shows the exposures expected for ringed seals based on NAEMO modeled results.

TABLE 6—QUANTITATIVE MODELING RESULTS OF POTENTIAL EXPOSURES FOR ICEX ACTIVITIES

Species	Level B harassment		Level A harassment	Total
	Behavioral disturbance	TTS		
Ringed seal .....	3,976	910	0	4,886

During monitoring for the 2018 IHA covering similar military readiness activities in the ICEX22 Study Area, the Navy did not visually observe or acoustically detect any marine mammals (U.S. Navy, 2018). During monitoring for the 2020 IHA covering similar military readiness activities in the ICEX22 Study Area, the Navy also did not visually observe any marine mammals (U.S. Navy, 2020). Acoustic monitoring associated with the 2020 IHA did not detect any discernible marine mammal vocalizations (Henderson *et al.* 2021). The monitoring report states that “there were a few very faint sounds that could have been [ringed seal] barks or yelps.” However, these were likely not from ringed seals, given that ringed seal vocalizations are generally produced in series (Jones *et al.* 2014). Henderson *et al.* (2021) expect that these sounds were likely ice-associated or perhaps anthropogenic.

### Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)). The 2004 NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that “least practicable impact” shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the

nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) and the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

### Mitigation for Marine Mammals and Their Habitat

Appropriate personnel (including civilian personnel) involved in mitigation and training or testing activity reporting under the specified activities must complete Arctic Environmental and Safety Awareness Training. Modules include: Arctic Species Awareness and Mitigations, Environmental Considerations, Hazardous Materials Management, and General Safety.

Further, NMFS proposes requiring the following general mitigation measures to prevent incidental take of ringed seals on the ice floe associated with the ice camp (further explanation of certain mitigation measures is provided in parentheses following the measure):

- The ice camp and runway must be established on first-year and multi-year ice without pressure ridges. (This will minimize physical impacts to subnivean lairs and impacts to sea ice habitat suitable for lairs.);

- Ice camp deployment must begin no later than mid-February 2022, and be gradual, with activity increasing over the first five days. Camp deployment must be completed by March 15, 2022. (This schedule should discourage seals from establishing birthing lairs in or near the ice camp, and would allow ringed seals to relocate outside of the ice camp area as needed, though as stated above, both are unlikely. Based on the best available science, Arctic ringed seal whelping is not expected to occur prior to mid-March, and therefore, construction of the ice camp would be completed prior to whelping in the area of ICEX22. As such, pups are not anticipated to be in the vicinity of the camp at commencement, and mothers would not need to move newborn pups due to construction of the camp.);

- Personnel on all on-ice vehicles must observe for marine and terrestrial animals;

- Snowmobiles must follow established routes, when available. On-ice vehicles must not be used to follow any animal, with the exception of actively deterring polar bears if the situation requires;

- Personnel on foot and operating on-ice vehicles must avoid areas of deep snowdrifts near pressure ridges. (These areas are preferred areas for subnivean lair development.);

- Personnel must maintain a 100 m (328 ft) avoidance distance from all observed mammals; and

- All material (*e.g.*, tents, unused food, excess fuel) and wastes (*e.g.*, solid waste, hazardous waste) must be removed from the ice floe upon completion of ICEX22 activities.

NMFS proposes requiring the following mitigation measures for activities involving acoustic transmissions (further explanation of certain mitigation measures is provided in parentheses following the measure):

- Personnel must begin passive acoustic monitoring (PAM) for vocalizing marine mammals 15 minutes prior to the start of activities involving active acoustic transmissions from submarines and exercise weapons.

- Personnel must delay active acoustic transmissions and exercise weapon launches if a marine mammal is detected during pre-activity PAM and must shutdown active acoustic transmissions if a marine mammal is detected during acoustic transmissions.

- Personnel must not restart acoustic transmissions or exercise weapon launches until 15 minutes have passed with no marine mammal detections.

Ramp up procedures for acoustic transmissions are not proposed as the Navy determined, and NMFS concurs, that they would result in impacts on military readiness and on the realism of training that would be impracticable.

NMFS proposes requiring the following mitigation measures for aircraft activities to prevent incidental take of marine mammals due to the presence of aircraft and associated noise.

- Fixed wing aircraft must operate at highest altitudes practicable taking into account safety of personnel, meteorological conditions, and need to support safe operations of a drifting ice camp. Aircraft must not reduce altitude if a seal is observed on the ice. In general, cruising elevation must be 305 m (1,000 ft) or higher.

- Unmanned Aircraft Systems (UASs) must maintain a minimum altitude of at least 15.2 m (50 ft) above the ice. They

must not be used to track or follow marine mammals.

- Helicopter flights must use prescribed transit corridors when traveling to or from Prudhoe Bay and the ice camp. Helicopters must not hover or circle above marine mammals or within 457 m (1,500 ft) of marine mammals.
- Aircraft must maintain a minimum separation distance of 1.6 km (1 mi) from groups of 5 or more seals.
- Aircraft must not land on ice within 800 m (0.5 mi) of hauled-out seals.

Based on our evaluation of the Navy's proposed mitigation measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) require requests for authorizations to include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the area of the specified activity. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving, or feeding areas).

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

- Mitigation and monitoring effectiveness.

The U.S. Navy has coordinated with NMFS to develop an overarching program, the Integrated Comprehensive Monitoring Program (ICMP), intended to coordinate marine species monitoring efforts across all regions and to allocate the most appropriate level and type of effort for each range complex based on a set of standardized objectives, and in acknowledgement of regional expertise and resource availability. The ICMP was created in direct response to Navy permitting requirements established in various MMPA regulations and ESA consultations. As a framework document, the ICMP applies by regulation to those activities on ranges and operating areas for which the Navy is seeking or has sought incidental take authorizations.

The ICMP is focused on Navy training and testing ranges where the majority of Navy activities occur regularly, as those areas have the greatest potential for being impacted by the Navy's activities. In comparison, ICEX is a short duration exercise that occurs approximately every other year. Due to the location and expeditionary nature of the ice camp, the number of personnel onsite is extremely limited and is constrained by the requirement to be able to evacuate all personnel in a single day with small planes. As such, the Navy asserts that a dedicated monitoring project would not be feasible as it would require additional personnel and equipment.

The Navy would conduct the following monitoring and reporting under the proposed IHA. In the event that personnel discover an injured or dead marine mammal, personnel must report the incident to the Office of Protected Resources (OPR), NMFS and to the Alaska regional stranding network as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);

- Observed behaviors of the animal(s), if alive;

- If available, photographs or video footage of the animal(s); and

- General circumstances under which the animal(s) was discovered (*e.g.*, during submarine activities, observed on ice floe, or by transiting aircraft).

In addition, the Navy would be required to provide NMFS with a draft exercise monitoring report within 90 days of the conclusion of the specified activity. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final. The report would include the number of marine mammals sighted, by species, and any other available information about the sighting(s) such as date, time, and approximate location (latitude and longitude).

All sonar usage would be collected via the Navy's Sonar Positional Reporting System database. The Navy would be required to provide data regarding sonar use and the number of shutdowns during ICEX22 monitoring in the Atlantic Fleet Training and Testing (AFTT) Letter of Authorization 2023 annual classified report. The Navy would also be required to analyze any declassified underwater recordings collected during ICEX22 for marine mammal vocalizations and report that information to NMFS, including the types and natures of sounds heard (*e.g.*, clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal) and the species or taxonomic group (if determinable). This information would also be submitted to NMFS with the 2023 annual AFTT declassified monitoring report.

### Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information

on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Underwater acoustic transmissions associated with ICEx22, as outlined previously, have the potential to result in Level B harassment of ringed seals in the form of TTS and behavioral disturbance. No take by Level A harassment, serious injury, or mortality are anticipated to result from this activity. Further, at close ranges and high sound levels approaching those that could cause PTS, seals would likely avoid the area immediately around the sound source.

NMFS estimates 910 takes of ringed seals by TTS from the submarine activities. TTS is a temporary impairment of hearing and can last from minutes or hours to days (in cases of strong TTS). In many cases, however, hearing sensitivity recovers rapidly after exposure to the sound ends. This activity has the potential to result in only minor levels of TTS, and hearing sensitivity of affected animals would be expected to recover quickly. Though TTS may occur as indicated, the overall fitness of the impacted individuals is unlikely to be affected given the temporary nature of TTS and the minor levels of TTS expected from these activities. Negative impacts on the reproduction or survival of affected ring seals as well as impacts on the stock are not anticipated.

Effects on individuals that are taken by Level B harassment by behavioral disturbance could include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight. More severe behavioral responses are

not anticipated due to the localized, intermittent use of active acoustic sources and mitigation using PAM, which would limit exposure to active acoustic sources. Most likely, individuals would be temporarily displaced by moving away from the sound source. As described previously in the *Acoustic Impacts* section, seals exposed to non-impulsive sources with a received sound pressure level within the range of calculated exposures, (142–193 dB re 1  $\mu$ Pa), have been shown to change their behavior by modifying diving activity and avoidance of the sound source (Götz *et al.* 2010; Kvadsheim *et al.* 2010). Although a minor change to a behavior may occur as a result of exposure to the sound sources associated with the proposed specified activity, these changes would be within the normal range of behaviors for the animal (e.g., the use of a breathing hole further from the source, rather than one closer to the source). Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and would not result in any adverse impact on reproduction or survival of affected individuals or to the stock as a whole.

The Navy’s proposed activities are localized and of relatively short duration. While the total ICEx22 Study Area is large, the Navy expects that most activities would occur within the Ice Camp Study Area in relatively close proximity to the ice camp. The larger Navy Activity Study Area depicts the range where submarines may maneuver during the exercise. The ice camp would be in existence for up to six weeks with acoustic transmission occurring intermittently over approximately four weeks.

The project is not expected to have significant adverse effects on marine mammal habitat. The project activities are limited in time and would not modify physical marine mammal habitat. While the activities may cause some fish to leave a specific area ensonified by acoustic transmissions, temporarily impacting marine mammals’ foraging opportunities, these fish would likely return to the affected area. As such, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

For on-ice activity, Level A harassment, Level B harassment, serious injury, and mortality are not anticipated, given the nature of the activities, the lack of previous ringed seal observations, and the mitigation measures NMFS has proposed to

include in the IHA. The ringed seal pupping season on the ice lasts for five to nine weeks during late winter and spring. As stated in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, March 1 is generally expected to be the onset of ice seal lairing season. The ice camp and runway would be established on multi-year ice without pressure ridges, where ringed seals tend to build their lairs. Ice camp deployment would begin mid-February, and be gradual, with activity increasing over the first five days. This schedule is expected to discourage seals from establishing birthing lairs near the ice camp, and would allow ringed seals to relocate outside of the ice camp area as needed (though as stated above, such instances are unlikely given the low average density of structures, the lack of previous ringed seals observations on the ice during ICEx activities, and proposed mitigation requirements that would require the Navy to construct the ice camp and runway on first-year or multiyear ice without pressure ridges). Ice camp deployment would be completed by March 15, before the pupping season. This would allow ringed seals to avoid the ice camp area once the pupping season begins, thereby avoiding potential impacts to nursing mothers and pups. Furthermore, ringed seal mothers are known to physically move pups from the birth lair to an alternate lair to avoid predation. If a ringed seal mother perceives the acoustic transmissions as a threat, the local network of multiple birth and haulout lairs would allow the mother and pup to move to a new lair.

Mitigation measures would also avoid damage to and disturbance of ringed seals and their lairs that could otherwise result from on-ice activities. Personnel on on-ice vehicles would observe for marine mammals, and would follow established routes when available, to avoid potential damage to or disturbance of lairs. Personnel on foot and operating on-ice vehicles would avoid deep snow drifts near pressure ridges, also to avoid potential damage to or disturbance of lairs. Further, personnel would maintain a 100 m distance from all observed marine mammals to avoid disturbing the animals due to the personnel’s presence. Implementation of these measures would prevent ringed seal lairs from being crushed or damaged during ICEx22 activities and would prevent seals and pups from abandoning and relocating to different lairs due to on-ice activities.

There is an ongoing UME for ice seals, including ringed seals. Elevated

strandings have occurred in the Bering and Chukchi Seas since June 2018. As of November 17, 2021, 95 ringed seal strandings have occurred, which is well below the partial abundance estimate of 171,418 ringed seals in the Arctic stock. The take proposed for authorization here does not provide a concern for any of these populations when considered in the context of these UMEs, especially given that the anticipated Level B harassment is unlikely to affect the reproduction or survival of any individuals. In addition, the ICEX22 Study Area is in the Arctic Ocean, well north and east of the primary area where seals have stranded along the western coast of Alaska (see map of strandings at: <https://www.fisheries.noaa.gov/alaska/marine-life-distress/2018-2021-ice-seal-unusual-mortality-event-alaska>). No Level A harassment, serious injury, or mortality is expected or proposed for authorization here, and take by Level B harassment of ringed seals would be reduced to the level of least practicable adverse impact through the incorporation of mitigation measures. As such, the proposed takes by Level B harassment of ringed seals are not expected to exacerbate or compound the ongoing UME.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No Level A harassment (injury), serious injury, or mortality is anticipated or proposed for authorization;
- Impacts would be limited to Level B harassment, primarily in the form of behavioral disturbance that results in minor changes in behavior;
- TTS is expected to affect only a limited number of animals (approximately 0.5 percent of the partial stock abundance described in Table 1) and TTS is expected to be minor and short term;
- The number of takes proposed to be authorized are low relative to the estimated abundances of the affected stock;
- Submarine training and testing activities would occur over only four weeks of the total six-week activity period;
- There would be no loss or modification of ringed seal habitat and minimal, temporary impacts on prey;
- Physical impacts to ringed seal subnivean lairs would be avoided; and
- Mitigation requirements for ice camp activities would prevent impacts

to ringed seals during the pupping season.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on the Arctic stock of ringed seals.

#### **Unmitigable Adverse Impact Analysis and Determination**

In order to issue an IHA, NMFS must find that the specified activity will not have an “unmitigable adverse impact” on the subsistence uses of the affected marine mammal species or stocks by Alaska Natives. NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Impacts to marine mammals from the specified activity would mostly include limited, temporary behavioral disturbances of ringed seals; however, some TTS is also anticipated. No Level A harassment (injury), serious injury, or mortality of marine mammals is expected or proposed for authorization, and the activities are not expected to have any impacts on reproductive or survival rates of any marine mammal species.

The proposed specified activity and associated harassment of ringed seals are not expected to impact marine mammals in numbers or locations sufficient to reduce their availability for subsistence harvest given the short-term, temporary nature of the activities, and the distance offshore from known subsistence hunting areas. The specified activity would occur for a brief period of time outside of the primary subsistence hunting season, and though seals are harvested for subsistence uses off the North Slope of Alaska, the ICEX22 Study Area is seaward of subsistence hunting areas.

The Navy plans to provide advance public notice to local residents and other users of the Prudhoe Bay region of Navy activities and measures used to

reduce impacts on resources. This includes notification to local Alaska Natives who hunt marine mammals for subsistence. If any Alaska Natives express concerns regarding project impacts to subsistence hunting of marine mammals, the Navy would further communicate with the concerned individuals or community. The Navy would provide project information and clarification of any mitigation measures that may reduce impacts to marine mammals.

Based on the description of the specified activity, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from the Navy’s proposed activities.

#### **Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with NMFS’ Alaska Regional Office (AKRO).

The NMFS Office of Protected Resources (OPR) is proposing to authorize take of ringed seals, which are listed under the ESA. The OPR has requested initiation of Section 7 consultation with the AKRO for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

#### **Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the Navy for conducting submarine training and testing activities in the Arctic Ocean beginning in February 2022, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>.

#### **Request for Public Comments**

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed

IHA for the proposed ICEX22 activities. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: December 7, 2021.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2021-26762 Filed 12-9-21; 8:45 am]

**BILLING CODE 3510-22-P**

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

### **Procurement List; Additions and Deletions**

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

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Date added to and deleted from the Procurement List:* January 09, 2022.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 785-6404, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **Additions**

On 9/3/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

#### **Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

### **End of Certification**

Accordingly, the following product(s) and service(s) are added to the Procurement List:

#### *Product(s)*

*NSN(s)—Product Name(s):*1095-01-600-0972—Knife, Combat

*Designated Source of Supply:* DePaul Industries, Portland, OR

*Contracting Activity:* DEFENSE LOGISTICS AGENCY, DLA LAND AND MARITIME

*List Designation:* C-List

*Mandatory for:* 100% of the requirement of the Department of Defense

**Michael R. Jurkowski,**

*Acting Director, Business Operations.*

[FR Doc. 2021-26813 Filed 12-9-21; 8:45 am]

**BILLING CODE 6353-01-P**

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

### **Procurement List; Proposed Additions and Deletions**

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

**ACTION:** Proposed additions to and deletions from the procurement list.

**SUMMARY:** The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete service(s) previously furnished by such agencies.

**DATES:** Comments must be received on or before: January 9, 2022.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785-6404, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### **Additions**

If the Committee approves the proposed additions, the entities of the Federal Government identified in this

notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

*Service(s)*

*Service Type:* Document Destruction

*Mandatory for:* DCSA, Federal Investigative Records Enterprise Operations (FIRE), Boyers, PA

*Designated Source of Supply:* Keystone Vocational Services Inc., Hermitage, PA

*Contracting Activity:* DEFENSE COUNTERINTELLIGENCE AND SECURITY SERVICE, DEFENSE CI AND SECURITY AGENCY

*Service Type:* Storage, Management and Fulfillment of Personal Protective Equipment Safety Stock

*Mandatory for:* Department of Homeland Security, Washington, DC

*Mandatory for:* LC Industries, Inc. in Durham, NC

*Contracting Activity:* Department of Homeland Security, Departmental Operations Acquisitions Division, Washington, DC

*Service Type:* Section 508 Compliance

*Mandatory for:* Defense Contract Management Agency (DCMA), DCMA Headquarters, Fort Lee, VA

*Designated Source of Supply:* Columbia Lighthouse for the Blind, Washington, DC

*Contracting Activity:* Defense Information Systems Agency (DISA)

**Deletions**

The following service(s) are proposed for deletion from the Procurement List:

*Service(s)*

*Service Type:* Custodial service

*Mandatory for:* US Department of Energy, Jamestown Service Center, Jamestown, ND, 8430 Country Club Street, Jamestown, ND

*Designated Source of Supply:* Alpha Opportunities, Inc., Jamestown, ND

*Contracting Activity:* ENERGY, DEPARTMENT OF, WESTERN-UPPPER GREAT PLAINS REGION

**Michael R. Jurkowski,**

*Acting Director, Business Operations.*

[FR Doc. 2021-26812 Filed 12-9-21; 8:45 am]

**BILLING CODE 6353-01-P**

**CONSUMER PRODUCT SAFETY COMMISSION**

[Docket No. CPSC-2012-0024]

**Proposed Extension of Approval of Information Collection; Comment Request; Notification Requirements for Coal and Wood Burning Appliances**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act (PRA) of 1995, the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval of information collection regarding notification requirements for coal and wood burning appliances. The CPSC will consider all comments received in response to this notice, before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

**DATES:** Submit written or electronic comments on the collection of information by February 8, 2022.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC-2012-0024, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (email), except through <https://www.regulations.gov> and as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Mail/hand delivery/courier Written Submissions:* Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. Alternatively, as a temporary option during the COVID-19 pandemic, you may email such submissions to: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

*Instructions:* All submissions must include the agency name and docket number for this notice. CPSC may post all comments received without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

*Docket:* For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, insert Docket No. CPSC-2012-0024 into the "Search" box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Gillham, Consumer Product

Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504-7991, or by email to: [cgillham@cpsc.gov](mailto:cgillham@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** CPSC seeks to renew the following currently approved collection of information:

*Title:* Notification Requirements for Coal and Wood Burning Appliances.

*OMB Number:* 3041-0040.

*Type of Review:* Renewal of collection.

*Frequency of Response:* On occasion.

*Affected Public:* Manufacturers and importers of coal and wood burning appliances.

*Estimated Number of Respondents:* An estimated five submissions annually.

*Estimated Time per Response:* Three hours per submission and 30 minutes for collecting and mailing the information to the CPSC.

*Total Estimated Annual Burden:* 17.5 hours (5 submissions × 3.5 hours).

*Total Estimated Annual Cost to Respondents:* \$1,238, based on an average total hourly employee compensation rate of \$70.73 for management, professional, and related occupations (Bureau of Labor Statistics: Total compensation rates for management, professional, and related occupations in private goods-producing industries, Table 4, March 2021) (17.5 hours × \$70.73).

*General Description of Collection:* 16 CFR part 1406, Coal and Wood Burning Appliances—Notification of Performance and Technical Data requires that manufacturers and importers provide consumers with written notification regarding certain technical and performance information related to safety on each coal and wood burning appliance. Manufacturers are also required to provide to the CPSC a copy of the notification to consumers and an explanation of all clearance distances contained in the notification. For existing models, all known manufacturers have complied with the requirements. Accordingly, there is no new burden associated with the requirements of 16 CFR part 1406, except in cases where existing models are changed, or new models are introduced. Fewer than five submissions are estimated annually from new stove models coming into the market, or new firms entering the market.

**Request for Comments**

The CPSC solicits written comments from all interested persons about the proposed collection of information. The CPSC specifically solicits information relevant to the following topics:

- Whether the collection of information described is necessary for the proper performance of the CPSC’s functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

**Alberta Mills,**

Secretary, Consumer Product Safety Commission.

[FR Doc. 2021–26799 Filed 12–9–21; 8:45 am]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0030]

### Proposed Extension of Approval of Information Collection; Comment Request—Testing and Recordkeeping Requirements for Carpets and Rugs

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval of information collection requirements for manufacturers and importers of carpets and rugs under the Standard for the Surface Flammability of Carpets and Rugs and the Standard for the Surface Flammability of Small Carpets and Rugs. The CPSC will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

**DATES:** Submit written or electronic comments on the collection of information by February 8, 2022.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2012–0030, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (email), except through [https://](https://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) and as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Mail/hand delivery/courier Written Submissions:* Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479.

Alternatively, as a temporary option during the COVID–19 pandemic, you may email such submissions to: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

*Instructions:* All submissions must include the agency name and docket number for this notice. CPSC may post all comments received without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit electronically: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

*Docket:* For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, insert Docket No. CPSC–2012–0030 into the “Search” box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Gillham, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7991, or by email to: [cgillham@cpsc.gov](mailto:cgillham@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** CPSC seeks to renew the following currently approved collection of information:

*Title:* Safety Standard for the Flammability of Carpets and Rugs and Standard for the Flammability of Small Carpets and Rugs.

*OMB Number:* 3041–0017.

*Type of Review:* Renewal of collection.

*Frequency of Response:* On occasion.

*Affected Public:* Manufacturers and importers of carpets and rugs.

*Estimated Number of Respondents:* Approximately 120 firms are subject to the information collection requirements under the FFA. An estimated 100 firms issue a general conformity certificate (GCC) or a children’s product certificate (CPC). In addition, an estimated 20 firms elect to issue a guaranty of compliance with the FFA. Staff estimates that the average firm issuing a GCC, CPC, or guaranty under the FFA is

required to conduct, on average, 100 tests per year, although the actual number of tests required by a given firm may vary, depending upon the number of carpet styles and the annual production volume.

*Estimated Time per Response:* For firms issuing a GCC or CPC, staff estimates that the time to conduct each test is 2 hours, including the time required to establish and maintain the test records. For firms issuing a guaranty of compliance, staff estimates that the time to conduct each test is 2.5 hours, including the time required to establish and maintain the test records.

*Total Estimated Annual Burden:* Staff estimates the total annualized burden to respondents to be 25,000 hours (20,000 hours for firms that issue a GCC/CPC plus 5,000 hours for firms that issue a guaranty of compliance).

*Total Estimated Annual Cost to Respondents:* The total annualized costs to all respondents for the hour burden for collection of information is estimated to be as high as \$1,557,750 using a mean hourly employer cost-per-hour-worked of \$62.31 (Bureau of Labor Statistics: Total compensation rates for management, professional, and related occupations, June 2021) (25,000 hours × \$62.31).

*General Description of Collection:* The Standard for the Surface Flammability of Carpets and Rugs (16 CFR part 1630) and the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR part 1631) establish requirements to reduce the flammability of carpets and rugs. The standards’ provisions include requirements for testing and recordkeeping for manufacturers and importers who furnish guaranties subject to the carpet and rug flammability standards. Separate from the guaranties, the Consumer Product Safety Improvement Act of 2008 (CPSIA) established product certification requirements for applicable consumer product safety standards and rules. 15 U.S.C. 2063. Manufacturers and importers of carpets and rugs intended for general use must certify in a GCC that the product complies with the applicable standards based on testing or a reasonable testing program. Manufacturers and importers of children’s carpets and rugs must certify in a CPC that the product complies with the applicable standards based on testing by a CPSC accredited third-party conformity assessment body.

### Request for Comments

The CPSC solicits written comments from all interested persons about the proposed collection of information. The



CPSC specifically solicits information relevant to the following topics:

- Whether the collection of information described is necessary for the proper performance of the CPSC's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

**Alberta Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2021-26800 Filed 12-9-21; 8:45 am]

**BILLING CODE 6355-01-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2021-SCC-0138]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Readmission for Servicemembers

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before January 10, 2022.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this information collection request by selecting "Department of Education" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox. Comments may also be sent to [ICDocketmgr@ed.gov](mailto:ICDocketmgr@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377-4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork

Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Student Assistance General Provisions—Readmission for Servicemembers.

*OMB Control Number:* 1845-0095.

*Type of Review:* Extension without change of a currently approved collection.

*Respondents/Affected Public:* Individual or Households; Private Sector; State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 4,570.

*Total Estimated Number of Annual Burden Hours:* 1,531.

*Abstract:* The Department of Education (the Department) is requesting an extension without change of the current record keeping information collection. Due to the effects of the COVID-19 pandemic the Department lacks sufficient data to allow for more accurate updates to the usage of the form. There has been no change in either the statute as provided by the Higher Education Act of 1965, as amended (HEA) or in the regulations. The regulations identify the requirements under which an institution must readmit servicemembers with the same academic status they held at the institution when they last attended (or were accepted for attendance). The regulations require institutions to charge readmitted servicemembers, for the first

academic year of their return, the same institutional charges they were charged for the academic year during which they left the institution (see section 484C of the HEA).

Dated: December 6, 2021.

**Kate Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021-26698 Filed 12-9-21; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Research Networks Focused on Critical Problems of Education Policy and Practice, and Improving Pandemic Recovery Efforts in Education Agencies

**AGENCY:** Institute of Education Sciences, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for the Research Networks Focused on Critical Problems of Education Policy and Practice, and the Improving Pandemic Recovery Efforts in Education Agencies, Assistance Listing Numbers 84.305N and 84.305X. This notice relates to the approved information collection under OMB control number 4040-0001.

**DATES:**

*Applications Available:* December 16, 2021.

*Deadline for Transmittal of Applications:* March 10, 2022.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at [www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf](http://www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf).

**FOR FURTHER INFORMATION CONTACT:** For the Research Networks Focused on Critical Problems of Education Policy and Practice competition (84.305N): Erin Higgins. Telephone: (202) 706-8509. Email: [Erin.Higgins@ed.gov](mailto:Erin.Higgins@ed.gov). For the Improving Pandemic Recovery Efforts in Education Agencies competition (84.305X): Allen Ruby. Telephone: (202) 245-8145. Email: [Allen.Ruby@ed.gov](mailto:Allen.Ruby@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text

telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

#### Full Text of Announcement

#### I. Funding Opportunity Description

*Purpose of Program:* Through the National Center for Education Research (NCER), the Institute of Education Sciences (Institute) provides support for programs of research in areas of demonstrated national need. The Institute's research grant programs are designed to provide interested individuals and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all learners.

Through the Research Networks Focused on Critical Problems of Education Policy and Practice grant program, NCER focuses resources and attention on specific education problems or issues that are a high priority for the Nation. NCER also establishes both a structure and process for researchers who are working on these issues to share ideas, build new knowledge, and strengthen their research and dissemination capacity. Through this program, NCER seeks to establish the Leveraging Evidence to Accelerate Recovery Nationwide Network.

Through the Improving Pandemic Recovery Efforts in Education Agencies grant program, NCER seeks to establish two research networks, with one examining recovery activities in prekindergarten through grade 12 and the other examining recovery activities in community colleges.

*Competitions in This Notice:* The Institute's NCER is announcing two competitions—one focused on leveraging evidence to accelerate recovery and one on improving pandemic recovery activities in education agencies.

*Research Networks Focused on Critical Problems of Education Policy and Practice.* Under this competition, NCER will consider only applications that address the following topic:

- Leveraging Evidence to Accelerate Recovery Nationwide Network, which includes:

- Network Scaling Lead.
- Product Teams.

*Improving Pandemic Recovery Efforts in Education Agencies.* Under this competition, NCER will consider only applications that address one of the following topics:

- Pre-K through Grade 12 Recovery Research Network, which includes:

- Network Lead.
- Research Teams.

- Community College Recover

Research Network, which includes:

- Network Lead.
- Research Teams.

*Exemption from Proposed Rulemaking:* Under section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, the Institute is not subject to section 437(d) of the General Education Provisions Act, 20 U.S.C. 1232(d), and is therefore not required to offer interested parties the opportunity to comment on priorities, selection criteria, definitions, and requirements.

*Program Authority:* 20 U.S.C. 9501 *et seq.* and the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117-2) Sec. 2010.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 77, 81, 82, 84, 86, 97, 98, and 99. In addition, the regulations in 34 CFR part 75 are applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217(a)-(c), 75.219, 75.220, 75.221, 75.222, 75.230, and 75.708. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

*Note:* The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Note:* The open licensing requirement in 2 CFR 3474.20 does not apply for these competitions.

*Note:* Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

#### II. Award Information

*Types of Awards:* Cooperative agreements.

*Fiscal Information:* These competitions will be supported with funds appropriated through the ARP. Note that ARP funds may only be used to support activities that involve "research related to addressing learning loss caused by the coronavirus among the student subgroups described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education

Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)) and students experiencing homelessness and children and youth in foster care, and to disseminate such findings to State educational agencies and local educational agencies and other appropriate entities."

*Estimated Range of Awards:* For the Research Networks Focused on Critical Problems of Education Policy and Practice competition (84.305N): \$1,000,000 to \$3,000,000. For the Improving Pandemic Recovery Efforts in Education Agencies competition (84.305X): \$1,000,000 to \$3,000,000. The size of the awards will depend on the type and scope of the projects proposed.

*Maximum Awards:* For all of the Institute's competitions, applications should include budgets no higher than the relevant maximum award as set out in the relevant RFA. The Institute will not make an award exceeding the maximum award amounts identified in the RFA and in this notice. For the Research Networks Focused on Critical Problems of Education Policy and Practice competition, the maximum awards are \$1,000,000 for the product team grants and \$3,000,000 for the network scaling lead grant. For the Improving Pandemic Recovery Efforts in Education Agencies competition, the maximum awards are \$3,000,000 for the research team grants and \$3,000,000 for the network lead grants.

*Estimated Number of Awards:* The number of awards made under each competition will depend on the quality of the applications received, the availability of funds, and the following limits on awards for the Research Networks Focused on Critical Problems of Education Policy and Practice competition and the Improving Pandemic Recovery Efforts in Education Agencies competition.

The Institute may waive any of the following limits on awards for both competitions in the special case that the peer review process results in a tie between two or more grant applications, making it impossible to adhere to the limits without funding only some of the equally ranked applications. In that case, the Institute may make a larger number of awards to include all applications of the same rank.

For the Research Networks Focused on Critical Problems of Education Policy and Practice competition, we intend to fund up to 10 grants for Product Teams and one grant for the Network Scaling Lead. However, should funding be available, we may consider making additional awards to high-quality applications that remain unfunded after these maximum limits are met.

For the Improving Pandemic Recovery Efforts in Education Agencies competition, we intend to fund up to five research teams and one network lead under the Prekindergarten through Grade 12 Recovery Research Network and up to five research teams and one network lead under the Community College Recovery Research Network. However, should funding be available, we may consider making additional awards to high-quality applications that remain unfunded after these maximum limits are met.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

### III. Eligibility Information

1. *Eligible Applicants:* Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. These include, but are not limited to, nonprofit and for-profit organizations and public and private agencies and institutions of higher education, such as colleges and universities. For the Improving Pandemic Recovery Activities in Education Agencies, research team applications must include an eligible education agency or community college system. Eligible education agencies are State and local agencies (including U.S. Territory and Tribal agencies) that oversee prekindergarten, elementary, secondary, postsecondary, and/or adult education as well as State and city community college systems implementing the recovery programs or policies.

2. a. *Cost Sharing or Matching:* These competitions do not require cost sharing or matching.

b. *Indirect Cost Rate Information:* For information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see [www2.ed.gov/about/offices/list/ocfo/intro.html](http://www2.ed.gov/about/offices/list/ocfo/intro.html).

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: Nonprofit and for-profit organizations and public and private agencies and institutions of higher education. The grantee may award subgrants to entities it has identified in an approved application.

### IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on

February 13, 2019 (84 FR 3768) and available at [www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf](http://www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf), which contain requirements and information on how to submit an application.

2. *Other Information:* Information regarding program and application requirements for the competitions will be contained in the NCER Requests for Applications (RFAs), which will be available on or before December 16, 2021, on the Institute's website at: <https://ies.ed.gov/funding/>. Application packages for these competitions will be available on or before December 16, 2021.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application are contained in the RFA for the specific competition. The forms that must be submitted are in the application package for the specific competition.

4. *Submission Deadline:* March 10, 2022, 11:59:59 p.m. Eastern Time.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review:* These competitions are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

### V. Application Review Information

1. *Selection Criteria:* For all of its grant competitions, the Institute uses selection criteria based on a peer-review process that has been approved by the National Board for Education Sciences. The Peer Review Procedures for Grant Applications can be found on the Institute's website at [https://ies.ed.gov/director/sro/peer\\_review/application\\_review.asp](https://ies.ed.gov/director/sro/peer_review/application_review.asp).

For the 84.305N competition, peer reviewers will be asked to evaluate the significance of the application; the quality of the product improvement plan or network and scaling activities (depending on the type of application); the qualifications and experience of the personnel; the resources of the applicant to support the proposed activities; and the quality of the dissemination history and dissemination plan if the application is for the Product Teams role. These criteria are described in greater detail in the RFA.

For the 84.305X competition, peer reviewers will be asked to evaluate the significance of the application, the quality and logic of the research plan, the quality and appropriateness of the personnel, the quality and availability of

resources, and the quality and relevance of the dissemination history and plan. These criteria are described in greater detail in the RFA.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Institute may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Institute may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Institute also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under these competitions, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Institute may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative

agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants should budget for an annual 3-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* (a) If you apply for a grant under one of the competitions announced in this notice, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Institute. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Institute under 34 CFR 75.118. The Institute may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

5. *Performance Measures:* To evaluate the overall success of its education research grant programs, the Institute annually assesses the percentage of projects that result in peer-reviewed publications and the number of Institute-supported interventions with evidence of efficacy in improving learner education outcomes. These measures were established under the authority in 34 CFR 75.110.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Institute considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Institute has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Institute also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Other Information

*Accessible Format:* On request to the appropriate program contact person

listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the RFA in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Mark Schneider,**

*Director, Institute of Education Sciences.*

[FR Doc. 2021–26765 Filed 12–9–21; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER22–545–000]

#### **NSF Chaumont Site 5 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 NSF Chaumont Site 5 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 December 27, 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.

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In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Dated: December 6, 2021.

**Kimberly D. Bose**,  
Secretary.

[FR Doc. 2021-26753 Filed 12-9-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER22-544-000]

#### NSF Chaumont Site 4 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 NSF Chaumont Site 4 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.

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last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

Dated: December 6, 2021.

**Kimberly D. Bose**,  
Secretary.

[FR Doc. 2021-26750 Filed 12-9-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER22-543-000]

#### NSF Chaumont Site 3 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 NSF Chaumont Site 3 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.

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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 December 27, 2021.

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Dated: December 6, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-26746 Filed 12-9-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER22-542-000]

#### NSF Chaumont Site 2 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 NSF Chaumont Site 2 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.

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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 December 27, 2021.

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Dated: December 6, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-26749 Filed 12-9-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AD21-10-000]

#### Modernizing Electricity Market Design; Notice Inviting Post-Technical Conference Comments

On September 14, 2021 and October 12, 2021, the Federal Energy Regulation Commission (Commission) convened staff-led technical conferences to discuss energy and ancillary services markets in the evolving electricity sector.

All interested persons are invited to file initial and reply post-technical conference comments on the topics in Parts I and II below, which contain the questions posed in each technical conference agenda. Commenters may reference material previously filed in this docket, including the technical conference transcripts, but are encouraged to avoid repetition or replication of previous material. Commenters need not answer all of the questions, but commenters are encouraged to organize responses using the numbering and order in the below questions. Initial comments must be submitted on or before February 4, 2022. Reply comments must be submitted on or before March 7, 2022.

#### I. Comments on Supplemental Notice for September 14, 2021 Technical Conference

We are seeking comments on the topics discussed during the technical conference held on September 14, 2021, including responses to the questions listed in the Supplemental Notice issued in this proceeding on September 13, 2021 in accordance with the deadlines and other guidance above. The questions from the agenda are included below.

##### *Panel 1: Understanding the Need for Additional Operational Flexibility in RTO/ISO Energy and Ancillary Services Markets*

1. RTOs/ISOs and other industry experts generally agree that power systems will require greater flexibility from system resources in the future.<sup>1</sup> What operational capabilities or services will be most valuable to RTO/ISO operators in the future as the resource mix and net load profile changes and

<sup>1</sup> See, e.g., CAISO, *Day-Ahead Market Enhancements Revised Straw Proposal*, at 7 (June 2020); SPP, *Uncertainty Product Whitepaper*, at 6 (Mar. 2020); NYISO, *Reliability and Market Considerations For A Grid in Transition*, at 8-9 (Dec. 2019).

why? Is there a desirable reaction time, sustained performance duration, etc. expected from a resource?

2. To what extent will the “traditional ancillary services” defined in Order No. 888<sup>2</sup> and existing energy market designs continue to ensure reliability as the resource mix changes in RTO/ISO markets in the future?

a. Will traditional ancillary services provide the appropriate types and adequate quantities of operational flexibility RTOs/ISOs need to manage both expected (*e.g.*, reasonably predictable) and unexpected (*e.g.*, inherently uncertain and captured in forecast errors) variability in net load?

b. Will existing RTO/ISO energy and ancillary services market designs that generally compensate certain traditional ancillary services resources based on the opportunity cost of foregone energy sales—for example, spinning and non-spinning reserves—give resources a sufficient economic incentive to offer their flexible capabilities to the RTO/ISO?

3. How should RTOs/ISOs define the system’s need for operational flexibility, now and in the future?

a. To what extent is operational flexibility needed on a bi-directional basis (*i.e.*, both up and down) versus a unidirectional basis (*i.e.*, only up or down)?

b. How do these needs compare to the services provided by traditional ancillary service products?

4. Could variable energy resources or new resource types (*e.g.*, storage, hybrid, and co-located resources) be operated or dispatched differently from the status quo to provide greater operational flexibility to the RTO/ISO, if so, how? Given the evolving resource mix, are the current eligibility requirements for each resource type to provide ancillary services appropriate?

*Panel 2: Revising Existing Operating Reserve Demand Curves (ORDCs) To Address Operational Flexibility Needs in RTOs/ISOs*

1. Contingency reserves are provided by existing 10- and 30-minute reserve products and are designed to ensure the system can recover from a contingency (*e.g.*, a generator or transmission outage). How will the procurement of

<sup>2</sup> Order No. 888 required the following six ancillary services be offered in an open access transmission tariff: (1) Scheduling, System Control and Dispatch Service; (2) Reactive Supply and Voltage Control from Generation Sources Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve—Spinning Reserve Service; and (6) Operating Reserve—Supplemental Reserve Service. Order No. 888, FERC Stats. and Regs. ¶ 31,036, at 31,703 (1996).

additional contingency reserves help RTO/ISO operators manage routine operational flexibility needs (*e.g.* needs driven by net load variability and uncertainty)?

2. What are the benefits of procuring contingency reserves beyond the minimum reserve requirement through a given ancillary service product?

a. If employing such a method, how should RTOs/ISOs determine the market’s demand for contingency reserves (both the quantity and willingness to pay) beyond the minimum reserve requirement of a given contingency reserve product?

b. What principles should RTOs/ISOs follow if they consider revising the shape of the ORDC for a given contingency reserve product (*e.g.*, introducing additional steps or graduation to the ORDC curve)? For example, should the willingness to pay for such additional reserves be based on the Value of Lost Load times the loss of load probability with a given quantity of the reserve product associated with the ORDC, the cost of actions operators would take to procure additional reserves, or some other valuation method? How should customer willingness to pay be incorporated?

3. Reserve shortage prices are administratively determined penalty factors invoked when the system falls below the minimum requirement of one or more reserve products. To what extent can higher reserve shortage prices inform investment decisions and reflect the value of flexible resource capabilities?

a. What principles should RTOs/ISOs follow if they consider revising the shortage price associated with the ORDC of a given contingency reserve?

b. How should the shortage prices of individual contingency reserve products be determined? For example, should the shortage prices reflect the marginal reliability value of each individual reserve product? How should customer willingness to pay be incorporated?

c. How should shortage pricing be implemented when the system is short both 10- and 30-minute reserves? Does establishing shortage prices based on the marginal reliability value of each contingency reserve product that is in shortage ensure that adding the shortage prices reflects the combined reliability impact of being short of those reserve products?

d. Do differences in shortage prices across regions present operational challenges today? Is there an expectation that such differences could present operational challenges in the future as the resource mix and load profiles change? Is there a need to better

align shortage pricing across RTOs/ISOs, and if so, what principles should be considered in doing so?

4. To what extent do RTOs/ISOs use contingency reserves to manage non-contingency related operational uncertainties (*e.g.*, expected and unexpected net load variability)? If such reserves are used for this purpose, should this alter an RTO/ISO’s approach to establishing the maximum height and shape of the ORDC? Under such approaches, how do prices in the ORDC appropriately reflect the marginal reliability value contingency reserves provide?

5. Is there a particular point at which procuring reserves beyond the minimum reserve requirement can reduce or conflict with the objectives of shortage prices? What is an appropriate balance between raising shortage prices and procuring reserves beyond the minimum reserve requirement given that procuring additional reserves can reduce the probability of the RTO/ISO experiencing a shortage?

*Panel 3: Creating New Products To Address Operational Flexibility Needs in RTOs/ISOs*

1. Ramp products, as distinguished from traditional ancillary service products, are relatively new ancillary services that are in place in CAISO and MISO, and approved for implementation in SPP. Ramp products are generally *not* designed to address contingencies<sup>3</sup> but are instead a mechanism to position the system efficiently to meet forecasted ramping needs in future intervals at least cost on an expected basis.

a. RTO/ISO ramp products procure ramp on a short-term basis (*e.g.*, for intervals of 10 or 15 minutes), but longer-term ramp products are being considered. For example, SPP is considering a longer-term ramp product<sup>4</sup> and the California Department of Market Monitoring has advised CAISO to consider a longer-term ramp product.<sup>5</sup> What drives the need for, and what are the benefits of, a longer-term ramp product compared to the existing

<sup>3</sup> For example, ramping products are not designed to be substitutable with the reserve products used for managing contingencies. See *e.g.* CAISO, *Flexible Ramping Products Straw Proposal* at 7, 10 (Nov. 1, 2011) <http://www.caiso.com/Documents/FlexibleRampingProductStrawProposal.pdf>; Sw. Power Pool, Inc., Filing, Docket No. ER20–1617–000, at 13 (filed Apr. 21, 2020).

<sup>4</sup> See Sw. Power Pool, Inc., “RR449—Uncertainty Product” (July 27, 2021), <https://www.spp.org/Documents/64125/rr449.zip>. See also Sw. Power Pool, Inc., *Uncertainty Product Prototype Design Whitepaper* (Mar. 13, 2020).

<sup>5</sup> CAISO Department of Market Monitoring, Comments on Issue Paper on Extending the Day-Ahead Market to EIM Entities, at 8 (Nov. 22, 2019).

shorter-term ramp products or traditional reserve products?

2. Will establishing reserve and ramp prices based on foregone energy revenues provide such signals in a system with a high penetration of variable energy resources, many of which have low or zero marginal costs?

a. If not, what other options exist to ensure sufficient compensation for resources providing reserve and ramp capability?

b. Historically, the prices for the ramp products in CAISO and MISO have often been zero. Are ramp prices expected to increase over time as system needs evolve? If so, what specific conditions might cause ramp prices to increase? Will any expected ramp price increases be sufficient to incent and appropriately compensate the ramp capability RTOs/ISOs and others expect will be needed due to the changing resource mix?

3. CAISO is considering a Day-Ahead Energy Market Enhancement proposal that seeks to ensure that the day-ahead market clears sufficient resources to address expected net load variability and uncertainty that arises between day-ahead and real-time. What are the expected advantages and disadvantages of revising the day-ahead market construct in this way to procure additional operational flexibility?

4. The Electric Reliability Council of Texas, Inc. (ERCOT) has proposed to procure fast-responding, limited duration products to address primary frequency control issues associated with declining system inertia.<sup>6</sup> CAISO also intends to initiate a stakeholder process to discuss, among other options, compensating internal resources for the provision of primary frequency response.<sup>7</sup> What are the merits of such reforms and should they be considered in other regions?

5. What other new products not yet discussed at this conference, do you think could increase operational flexibility in RTOs/ISOs?

a. Can capacity markets or other, potentially new, “intermediate” forward market constructs that clear between existing capacity market auctions and the day-ahead timeframe help ensure that RTO/ISO operators have sufficient operational flexibility in real time?

b. For example, can a new shorter-term forward market to procure expected operational flexibility needs

held closer to the delivery period (e.g., three months ahead as opposed to three years ahead) and with a more granular delivery period than the annual capacity market (e.g., monthly or seasonal delivery period, or a delivery period based on the hours of an RTO/ISO’s morning or evening ramp as opposed to the annual delivery period of most RTO/ISO capacity markets) help ensure that RTO/ISO operators have sufficient operational flexibility in real time?

*Panel 4: Market Design Issues and Tradeoffs To Consider in Reforms To Increase Operational Flexibility in RTO/ISO Energy and Ancillary Services Markets*

1. To date, most RTOs/ISOs have pursued new ramping products or ORDC reforms, but not both. What are the tradeoffs to consider when deciding between these two approaches and how do they interact? Should these two types of reforms be considered substitutes or complements? Does the opportunity-cost-based method of establishing reserve and ramping product prices send appropriate long-term signals to resources to invest in or maintain flexible capabilities?

2. Some entities have observed that offering additional resource capabilities into energy and ancillary services markets may not be in the financial interest of certain resources because doing so could lower energy prices by either avoiding scarcity conditions or obviating the need to commit more expensive units, and thus reduce their expected energy and ancillary services markets revenue. Are such incentive issues relevant in the context of reforming energy and ancillary services markets to address operational flexibility needs? If so, how should such issues be addressed?

3. What other market design issues and tradeoffs should RTOs/ISOs, stakeholders, and regulators consider when designing and implementing reforms to energy and ancillary services markets to increase operational flexibility?

4. What are the tradeoffs to consider in procuring flexibility in the energy and ancillary services markets versus the capacity market or another new shorter-term forward market construct?

**II. Comments on Supplemental Notice for October 12, 2021 Technical Conference**

We are seeking comments on the topics discussed during the technical conference held on October 12, 2021, including responses to the questions listed in the Supplemental Notice issued in this proceeding on October 7,

2021 in accordance with the deadlines and other guidance above. The questions from the agenda are included below.

*Panel 1: Incenting Resources To Reflect Their Full Operational Flexibility in Energy and Ancillary Services Offers*

1. Do any existing RTO/ISO energy and ancillary services market participation rules, supply offer rules, eligibility requirements, and relevant procedures encourage certain resources to offer into the market inflexibly (i.e., without reflecting the full range of their physical operating capabilities)? For example, are any changes to resource supply offer rules or uplift eligibility requirements needed to ensure resources submit physical offer parameters (e.g., notification time, minimum run time, ramp rates) that reflect their flexible capabilities? To what extent do RTOs/ISOs account for existing fuel limitations, like natural gas supplies, that have the potential to impact resource flexibility?

2. Do any existing RTO/ISO energy and ancillary services market rules exhibit an undue preference for certain resource types over other resource types? If so, please explain how and provide examples.

3. To what extent do existing self-scheduling or self-commitment rules in RTO/ISO markets reduce the amount of operational flexibility available to the RTO/ISO in real time and the system’s need for operational flexibility? Are options for self-scheduling and self-commitment needed to allow resource owners to make the best use of their assets over time?

4. Do current RTO/ISO offer rules, market power mitigation practices, and reference levels prevent or discourage resources from including in their offers the additional costs, if any, that resources incur from being more flexible (e.g., longer-term wear and tear on natural gas resources due to increased cycling, battery warranty considerations, etc.)? Are such costs difficult to quantify? If so, please explain why. How should RTOs/ISOs review such costs to ensure that resources’ energy and ancillary services supply offers are competitive?

*Panel 2: Maximizing the Operational Flexibility Available From New and Emerging Resource Types*

1. Do existing RTO/ISO energy and ancillary services market rules, practices, or procedures prevent or otherwise obstruct relatively new and emerging resource types from fully participating in RTO/ISO markets and

<sup>6</sup> See Pengwei Du et al., *New Ancillary Service Market for ERCOT*, IEEE Access Volume 8, <https://ieeexplore.ieee.org/abstract/document/9208672>.

<sup>7</sup> See CAISO, *2021 Three-Year Policy Initiatives Roadmap and Annual Plan*, <http://www.caiso.com/InitiativeDocuments/2021FinalPolicyInitiativesRoadmap.pdf>.



offering the operational flexibility they are technically capable of providing?

2. To what extent do existing RTO/ISO energy and ancillary services market rules require standalone variable energy resources to respond to dispatch instructions (e.g., curtailment)?

a. To what extent are standalone variable energy resources technically capable of being “dispatchable?” Is there a distinction between being dispatched down and being curtailed?

b. Under what circumstances can a standalone variable energy resource be dispatched up versus down?

3. To what extent do resource capabilities vary amongst different classes and vintages of variable energy resources (e.g., newer vs. older wind turbine models, onshore vs. offshore wind, fixed-tilt vs. tracking solar, etc.) and do offer rules currently reflect such differences, if any?

4. To what extent are emerging resource types, such as hybrids, storage resources, and distributed energy resource aggregations technically capable of providing existing ancillary service products or other reliability services? Acknowledging that some market rules are evolving due to Order Nos. 841<sup>8</sup> and 2222,<sup>9</sup> do current RTO/ISO market rules for ancillary services and other reliability services, such as eligibility requirements, align with these emerging resource types’ capabilities?

5. What RTO/ISO energy and ancillary services market reforms could be adopted, if any, to ensure that new and emerging resource types are able to offer their full operational capabilities into RTO/ISO energy and ancillary services markets to help operators manage changing system needs?

a. Would shortening the day-ahead market interval length increase the operational flexibility available from resources? What considerations (e.g., computing time) are important to consider when establishing the length of energy and ancillary services market intervals?

b. RTOs/ISOs often require resources that provide ancillary services to be capable of doing so for a duration of 60 minutes. Does this eligibility requirement limit the pool of resources available to offer ancillary services into RTO/ISO markets? Would reexamining the need for this particular eligibility

requirement present reliability concerns or raise other issues for operators? If so, please explain.

*Panel 3: Revising RTO/ISO Market Models, Optimization, and Other Software Elements To Address Operational Flexibility Needs*

1. What are the challenges to incorporating uncertainty within the current RTO/ISO market software? For example, how can improvements in forecasting, the use of intra-day commitment processes that include a range of forecasts, or longer look-ahead commitment and dispatch horizons result in more efficient unit commitment and dispatch in real time?

2. Can changes to RTO/ISO unit commitment and dispatch software address the need to posture system resources optimally to meet expected and unexpected ramp and operational flexibility needs?

a. How are these enhancements tailored to the expected magnitude of forecast errors in different time periods?

b. How would multi-period dispatch modeling in the real-time market help address operational flexibility needs? What are the advantages and disadvantages of a binding as opposed to an advisory multi-period dispatch model?

c. What are the computational burdens associated with such modeling enhancements?

3. To what extent can software enhancements for modeling specific technology types (e.g., multi-configuration modeling of combined cycle units, storage, etc.) help address the system’s changing operational needs?

4. Can multi-day-ahead markets or hour-ahead markets help address operational flexibility needs in RTOs/ISOs? What is the objective of such approaches, and are there potential drawbacks?

*Panel 4: Out-of-Market Operator Actions Used To Manage Net Load Variability and Uncertainty*

1. RTO/ISO reports and filings to the Commission indicate that at times operators take out-of-market actions to address net load uncertainty. What impacts do such actions have on price formation in RTO/ISO energy and ancillary services markets? How strong are those impacts, both in terms of individual instances of operator actions and in terms of more general effects on the efficiency of the markets?

2. Do RTOs/ISOs anticipate that, without RTO/ISO market reforms, out-of-market operator actions will increase

over time in response to changing system needs?

3. To what degree, if any, do out-of-market actions by operators undermine RTO/ISO energy and ancillary services market reforms, such as operating reserve demand curve reforms or ramp products, designed to incent resources to provide RTO/ISO operators with the operational flexibility needed to manage the system?

4. How can RTOs/ISOs best mitigate the risks of out-of-market operator actions undermining incentives for resource operational flexibility, to the extent such risks exist?

*Technical Information:* Alex Smith, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-6601, alexander.smith@ferc.gov.

*Legal Information:* Adam Eldean, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8047, adam.eldean@ferc.gov.

Dated: December 6, 2021.

**Kimberly D. Bose,**  
*Secretary.*

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. ER22-541-000]

**NSF Chaumont Site 1 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 NSF Chaumont Site 1 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

<sup>8</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 83 FR 9580, 162 FERC ¶ 61,127.

<sup>9</sup> *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 85 FR 67094, 172 FERC ¶ 61,247.

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 27, 2021.

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Dated: December 6, 2021.

**Kimberly D. Bose,**

Secretary.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC22-16-000.

*Applicants:* Energy Center Paxton LLC, KKR Thor Bidco, LLC.

*Description:* Supplement to November 15, 2021 Application for Authorization Under Section 203 of the Federal Power Act of Energy Center Paxton LLC.

*Filed Date:* 12/3/21.

*Accession Number:* 20211203-5256.

*Comment Date:* 5 p.m. ET 12/17/21.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER22-46-002.

*Applicants:* Parkway Generation Essex, LLC.

*Description:* Tariff Amendment: Response to Deficiency Letter to be effective 12/1/2021.

*Filed Date:* 12/6/21.

*Accession Number:* 20211206-5176.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-87-001.

*Applicants:* Southwest Power Pool, Inc., Basin Electric Power Cooperative.

*Description:* Tariff Amendment: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): 3843 Basin/Saskatchewan Power Corp Inter Agr-Amended Filing to be effective 12/15/2021.

*Filed Date:* 12/3/21.

*Accession Number:* 20211203-5239.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-94-001.

*Applicants:* Basin Electric Power Cooperative.

*Description:* Tariff Amendment: Basin Electric Submission of Amendment to Interconnection Agreement in ER22-94 to be effective 7/10/2020.

*Filed Date:* 12/6/21.

*Accession Number:* 20211206-5150.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-541-000.

*Applicants:* NSF Chaumont Site 1 LLC, Bracewell LLP.

*Description:* Baseline eTariff Filing: NSF Chaumont Site 1 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 12/17/2021.

*Filed Date:* 12/3/21.

*Accession Number:* 20211203-5206.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-542-000.

*Applicants:* NSF Chaumont Site 2 LLC, Bracewell LLP.

*Description:* Baseline eTariff Filing: NSF Chaumont Site 2 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 12/17/2021.

*Filed Date:* 12/3/21.

*Accession Number:* 20211203-5215.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-543-000.

*Applicants:* NSF Chaumont Site 3 LLC, Bracewell LLP.

*Description:* Baseline eTariff Filing: NSF Chaumont Site 3 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 12/17/2021.

*Filed Date:* 12/3/21.

*Accession Number:* 20211203-5220.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-544-000.

*Applicants:* NSF Chaumont Site 4 LLC, Bracewell LLP.

*Description:* Baseline eTariff Filing: NSF Chaumont Site 4 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 12/17/2021.

*Filed Date:* 12/3/21.

*Accession Number:* 20211203-5225.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-545-000.

*Applicants:* NSF Chaumont Site 5 LLC, Bracewell LLP.

*Description:* Baseline eTariff Filing: NSF Chaumont Site 5 LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 12/17/2021.

*Filed Date:* 12/3/21.

*Accession Number:* 20211203-5229.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-546-000.

*Applicants:* PacifiCorp.  
*Description:* § 205(d) Rate Filing: Rock Creek Provisional Large Gen Interconnection Agrmt to be effective 12/2/2021.

*Filed Date:* 12/3/21.

*Accession Number:* 20211203-5231.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-547-000.

*Applicants:* Tri-State Generation and Transmission Association, Inc.

*Description:* § 205(d) Rate Filing: Service Agreement No. 901 to be effective 11/19/2020.

*Filed Date:* 12/3/21.

*Accession Number:* 20211203-5235.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-548-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Revisions to OATT, Behind the Meter Generation Business Rules on Status Changes to be effective 2/2/2022.

*Filed Date:* 12/3/21.

*Accession Number:* 20211203-5244.

*Comment Date:* 5 p.m. ET 12/27/21.

*Docket Numbers:* ER22-549-000.

*Applicants:* The Valence Group, LLC.

*Description:* Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 12/15/2021.

*Filed Date:* 12/6/21.

*Accession Number:* 20211206–5000.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–550–000.  
*Applicants:* Chambersburg Energy, LLC.  
*Description:* § 205(d) Rate Filing: Filing of Letter Agreement and Requests for Waivers to be effective 1/25/2022.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5001.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–551–000.  
*Applicants:* Rockford Power, LLC.  
*Description:* § 205(d) Rate Filing: Filing of Letter Agreement and Requests for Waivers to be effective 1/25/2022.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5002.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–552–000.  
*Applicants:* Rockford Power II, LLC.  
*Description:* § 205(d) Rate Filing: Filing of Letter Agreements and Requests for Waivers to be effective 1/25/2022.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5003.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–553–000.  
*Applicants:* Troy Energy, LLC.  
*Description:* § 205(d) Rate Filing: Filing of Letter Agreement and Requests for Waivers to be effective 1/25/2022.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5004.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–554–000.  
*Applicants:* LSP University Park, LLC.  
*Description:* § 205(d) Rate Filing: Filing of Letter Agreement and Requests for Waivers to be effective 1/25/2022.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5005.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–555–000.  
*Applicants:* University Park Energy, LLC.  
*Description:* § 205(d) Rate Filing: Filing of Letter Agreement and Requests for Waivers to be effective 1/25/2022.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5006.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–556–000.  
*Applicants:* ISO New England Inc. & New England Power Pool.  
*Description:* ISO New England Inc. and New England Power Pool filing of Installed Capacity Requirements, Hydro-Quebec Interconnection Capability Credits and Related Values for 2022–2023, 2023–2024 and 2024–2025 Annual Reconfiguration Auction.  
*Filed Date:* 11/30/21.  
*Accession Number:* 20211130–5348.  
*Comment Date:* 5 p.m. ET 12/21/21.  
*Docket Numbers:* ER22–558–000.

*Applicants:* Southwest Power Pool, Inc.  
*Description:* § 205(d) Rate Filing: Revisions to Extend Tariff Administration between SPP and SPA through 06/30/2023 to be effective 1/1/2022.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5097.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–559–000.  
*Applicants:* Westlands Transmission, LLC.  
*Description:* § 205(d) Rate Filing: Third Amended Transmission Service Agreement, Rate Schedule No. 1 to be effective 12/7/2021.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5108.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–560–000.  
*Applicants:* AEP Texas Inc.  
*Description:* § 205(d) Rate Filing: AEPTX–STEC Second Amended and Restated Interconnection Agreement to be effective 2/6/2022.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5136.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–561–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: AEP submits one FA with City of Danville re: SA No. 2104 to be effective 2/5/2022.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5171.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–562–000.  
*Applicants:* Assembly Solar, LLC.  
*Description:* § 205(d) Rate Filing: SFA amendment filing 2021 to be effective 12/7/2021.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5181.  
*Comment Date:* 5 p.m. ET 12/27/21.  
*Docket Numbers:* ER22–563–000.  
*Applicants:* American Electric Power Service Corporation, Appalachian Power Company, 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 with City of Danville re SA No. 2104 to be effective 2/5/2022.  
*Filed Date:* 12/6/21.  
*Accession Number:* 20211206–5194.  
*Comment Date:* 5 p.m. ET 12/27/21.  
 Take notice that the Commission received the following qualifying facility filings:  
*Docket Numbers:* QF21–629–001; EL21–89–000.  
*Applicants:* Hecate Energy Blair Road LLC, Hecate Energy Blair Road LLC.

*Description:* Refund Report of Hecate Energy Blair Road LLC, et al.  
*Filed Date:* 12/2/21.  
*Accession Number:* 20211202–5274.  
*Comment Date:* 5 p.m. ET 12/23/21.  
 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: December 6, 2021.

**Kimberly D. Bose,**  
 Secretary.

[FR Doc. 2021–26748 Filed 12–9–21; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER22–549–000]

#### The Valence Group, 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 The Valence Group, 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 December 27, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: December 6, 2021.

**Kimberly D. Bose,**

Secretary.

[FR Doc. 2021-26752 Filed 12-9-21; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9214-01-OMS]

### Privacy Act of 1974; System of Records

**AGENCY:** Office of Mission Support (OMS), Environmental Protection Agency (EPA)

**ACTION:** Notice of a new system of records.

**SUMMARY:** The U.S. Environmental Protection Agency's (EPA), Office of Human Resources (OHR) is giving notice that it proposes to create a new system of records pursuant to the provisions of the Privacy Act of 1974. Human Resources Line of Business (HR LoB) is being created to support payroll, human resource (HR) services, eLearning, and data analytics. The HR LoB suite of systems is a government shared service hosted by the Department of Interior's Interior Business Center (DOI-IBC) and includes the Federal Personnel Payroll System (FPPS), the Workforce Transformation and Tracking System (WTTS)/Entrance on Duty (EOD), FedTalent, and Oracle's Business Intelligence Enterprise Edition (OBIEE).

**DATES:** Persons wishing to comment on this system of records notice must do so by January 10, 2022. New routine uses for this new system of records will be effective January 10, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OMS-2020-0365, by one of the following methods:

*Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.

*Email:* [docket\\_oms@epa.gov](mailto:docket_oms@epa.gov). Include the Docket ID number in the subject line of the message.

*Fax:* 202-566-1752.

*Mail:* OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

*Hand Delivery:* OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OMS-2020-0365. The EPA policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through <https://www.regulations.gov>. The <https://www.regulations.gov> website is an "anonymous access" system for EPA, which means the EPA will not know

your identity or contact information unless you provide it in the body of your comment. Each agency determines submission requirements within their own internal processes and standards. EPA has no requirement of personal information. If you send an email comment directly to the EPA without going through <https://www.regulations.gov> your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

*Docket:* All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <https://www.regulations.gov> or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 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 OMS Docket is (202) 566-1752. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are 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. We encourage the public to submit comments via <https://www.regulations.gov> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current

status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Lizabeh Engebretson, [engebretson.lizabeh@epa.gov](mailto:engebretson.lizabeh@epa.gov), 202–564–0804, Director, Human Resource Information Systems Management Staff, Office of Human Resources (OHR), Office of Mission Support (OMS), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** EPA previously used one system (EPA People Plus) for payroll, HR systems, and time and attendance. EPA has split this system in response to an Office of Management and Budget (OMB) mandate to separate payroll and HR systems from time and attendance. EPA will now use a suite of systems hosted by the Department of Interior's (DOI) Interior Business Center (IBC) for some payroll activities and for processing personnel. EPA continues to use PeoplePlus to support time and attendance, which is covered by an existing System of Records Notice (PeoplePlus EPA–1). This SORN (HR LoB EPA–93) is for EPA's records in the DOI-hosted HR LoB.

HR LoB is a comprehensive suite of integrated personnel and payroll systems used by federal agencies for processing personnel and payroll related activities. HR LoB, EPA–93, will cover EPA records in:

- Workforce Transformation and Tracking System and Entrance on Duty System (WTTS/EODS)—web-based Human Resources Management Suite (HRMS) for managing recruitment and onboarding activities.
- FedTalent—for eLearning and data analytics.
- FPPS—personnel and payroll system.
- Oracle's Business Intelligence Enterprise Edition (OBIEE)—Datamart/Analytics—is a business intelligence tool used to gather, store, and analyze data for enterprise reports, dashboards, scorecards and ad hoc analysis.

**SYSTEM NAME AND NUMBER:**

Human Resources Line of Business (HR LoB), EPA–93

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

EPA OHR, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Records hosted by DOI/IBC are located at 7301 West Mansfield Ave., MS D–2400, Denver, CO 80235–2230, and are also located at Departmental, bureau and office systems and locations that

prepare and provide input documents and information for data processing and administrative actions for this system.

**SYSTEM MANAGER(S):**

Mara Kamen, [kamen.mara@epa.gov](mailto:kamen.mara@epa.gov), 202–564–7159, Director, OHR, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 5101, et seq; 31 U.S.C. 3512; 31 U.S.C. Chapter 11; 5 CFR part 297; The Office of Management and Budget Circular A–127, Revised, Financial Management Systems; this Circular is issued pursuant to the Chief Financial Officers Act (CFOs Act) of 1990, P.L. 101–576).

**PURPOSE(S) OF THE SYSTEM:**

EPA maintains records in HR LoB to administer EPA's HR activities, including: pay and leave requirements, processing, accounting, learning and development, and reporting requirements. The records also provide the basic source of factual data about a person's employment while in federal service and after his or her separation from federal service in accordance with applicable records policies. Records in HR LoB have various uses by Agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing federal employment; computing length of service; and other information needed to provide personnel services.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former EPA employees, including Health and Human Services Public Health Service Commissioned Officers assigned to EPA, grantees, intergovernmental detailees, interagency agreement detailees, and contractors, and family members of these individuals.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

HR LoB collects the following employee data elements: Name, Citizenship, Gender, Birth Date, Group Affiliation, Marital Status, Other Names Used, Legal Status, Place of Birth, Security Clearance, Spouse Information, Financial Information, Medical Information, Disability Information, Education Information, Driver's License State and Number, Race/Ethnicity, Social Security Number (SSN) and truncated SSN, Personal Cell Telephone Number, Personal Email Address, Home Telephone Number, Family member,

Child or Dependent Information, Employment Information, Military Status/Service, Mailing/Home Address, Taxpayer Identification Number, Bank Account information such as Routing and Account Numbers, Beneficiary Information, Bond Co-owner Name(s) and Information, Professional Licensing and Credentials, Family Relationships, Age, Involuntary Debt (Garnishments or Child Support Payments), Court Order Information, Back Pay Information, User ID, Time and Attendance data, Leave Time Information, Employee Common Identifier (ECI), Person Number (a unique number that identifies a person within HR LoB, and Person Number-Emergency (a unique number identifying an individual within HR LoB for a Leave Share Occurrence).

**RECORD SOURCE CATEGORIES:**

Information is obtained from individuals on whom the records are maintained, official personnel records of individuals on whom the records are maintained, supervisors, timekeepers, previous employers, the Internal Revenue Service and state tax agencies, the Department of the Treasury, other Federal agencies, courts, state child support agencies, employing agency accounting offices, and third-party benefit providers.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

The routine uses below are both related to and compatible with the original purpose for which the information was collected. The following general routine uses apply to this system:

*A. Disclosure for Law Enforcement Purposes:* Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

*B. Disclosure Incident to Requesting Information:* Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance,

the letting of a contract, or the issuance or retention of a grant, or other benefit.

*C. Disclosure to Requesting Agency:* Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

*D. Disclosure to Office of Management and Budget:* Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

*E. Disclosure to Congressional Offices:* Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

*F. Disclosure to Department of Justice:* Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof;
2. Any employee of the Agency in his or her official capacity;
3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or
4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

*G. Disclosure to the National Archives:* Information may be disclosed to the National Archives and Records

Administration in records management inspections.

*H. Disclosure to Contractors, Grantees, and Others:* Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

*I. Disclosures for Administrative Claims, Complaints and Appeals:* Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

*J. Disclosure to the Office of Personnel Management:* Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

*K. Disclosure in Connection With Litigation:* Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11). The two routine uses below (L and M) are required by OMB Memorandum M-17-12.

*L. Disclosure to Persons or Entities in Response to an Actual or Suspected Breach of Personally Identifiable Information:* To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined

that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

*M. Disclosure to Assist Another Agency in Its Efforts to Respond to a Breach of Personally Identifiable Information:* To another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

**POLICIES AND PROCEDURES FOR STORAGE OF RECORDS:**

Electronic records are stored in computers, removable drives, storage devices, electronic databases, and other electronic media hosted by DOI/IBC.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

HR LoB authorized users may retrieve information on an individual employee using full name, SSN, and Employee Common Identifier (ECI)—unique number identifying employees across Federal automated systems.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The retention of data in the system is in accordance with applicable EPA Records Schedules 1005, 1006, 1026, and 1029 as approved by the National Archives and Records Administration (NARA).

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Security controls used to protect personally identifiable information (PII) in HR LoB are commensurate with those required for an information system rated MODERATE for confidentiality, integrity, and availability, as prescribed in National Institute of Standards and Technology (NIST) Special Publication, 800-53, "Security and Privacy Controls for Information Systems and Organizations," Revision 5.

1. *Administrative Safeguards:* EPA personnel are required to complete

annual agency Information Security and Privacy training. EPA personnel are instructed to lock their computers when they leave their desks.

2. *Technical Safeguards:* Electronic records are maintained in a secure password protected environment. Access to records is limited to those who have a need to know. Electronic records are restricted to authorized users with appropriate security privileges, including the use of 2-factor PIV Card authentication and permission level assignments. Web-based connections are Tier3 VPN encrypted sessions between EPA and DOI. The database is maintained behind a firewall. WTTS/EOD, FedTalent, OBIEE, and FPPS have multiple levels of role-based access controls that protect the privacy of information in HR LoB. The level of these access controls determines the security privileges of HR LoB users. There are three levels of role-based security (User, Security, Administrator) and they follow the separation of duties outlined in NIST guidance.

3. *Physical Safeguards:* These records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel can access.

#### RECORD ACCESS PROCEDURES:

Individuals seeking access to information in this system of records about themselves are required to provide adequate identification (*e.g.*, driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required, as warranted. Requests must meet the requirements of EPA regulations that implement the Privacy Act of 1974, at 40 CFR part 16.

#### CONTESTING RECORDS PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

#### NOTIFICATION PROCEDURES:

Any individual who wants to know whether this system of records contains a record about themselves, should make a written request to: Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, or to [privacy@epa.gov](mailto:privacy@epa.gov).

#### EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

#### HISTORY:

None.

#### Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2021-26614 Filed 12-9-21; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9227-01-OMS]

### Privacy Act of 1974; System of Records

**AGENCY:** Office of Mission Support (OMS), Environmental Protection Agency (EPA).

**ACTION:** Notice of a new system of records.

**SUMMARY:** The U.S. Environmental Protection Agency's (EPA), Office of Mission Support (OMS), Strategic IT Investment Staff (SITIS) is giving notice that it proposes to create a new system of records pursuant to the provisions of the Privacy Act of 1974. EPA has developed the Purchase Card Order Request System (PCORS) to manage the pre-approval process for purchase card transactions and to place orders after approval.

**DATES:** Persons wishing to comment on this system of records notice must do so by January 10, 2022. New routine uses for this new system of records will be effective January 10, 2022.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OMS-2021-0297, by one of the following methods:

*Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.

*Email:* [docket\\_oms@epa.gov](mailto:docket_oms@epa.gov). Include the Docket ID number in the subject line of the message.

*Fax:* 202-566-1752.

*Mail:* OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

*Hand Delivery:* OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OMS-2021-0297. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [https://](https://www.regulations.gov)

[www.regulations.gov](https://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through <https://www.regulations.gov>. The <https://www.regulations.gov> website is an "anonymous access" system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

*Docket:* All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <https://www.regulations.gov> or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally 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 OMS Docket is (202) 566-1752.

#### Temporary Hours During COVID-19

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are 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. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Please submit questions to Michael Hardy, U.S. EPA, 1200 Pennsylvania Avenue, Room 3352-L, Washington, DC 20460, [hardy.michael@epa.gov](mailto:hardy.michael@epa.gov) at 202-564-7899 or Dina Castellon, U.S. EPA, 1200 Pennsylvania Avenue, Room 3352-Q, Washington, DC 20460, [castellon.dina@epa.gov](mailto:castellon.dina@epa.gov) at 202-564-4912.

**SUPPLEMENTARY INFORMATION:** EPA developed PCORS for use on EPA's Business Automation Platform (BAP), a strategic platform for business process automation. PCORS is accessible through <https://forms.epa.gov> and <https://epaoei.lightning.force.com/lightning/page/home>. EPA uses PCORS to manage the pre-approval process for purchase card orders and to place orders once approved. Requesters can submit their requests in PCORS (Interface 1). Requests are then routed to the purchase cardholder (PCH) for an initial review, followed by the cardholder's approving official (AO), and finally the Funds Certifying Officer (FCO) for funding before notifying the cardholder that the request is in Fully Approved—Ready to Order status. The PCH, AO, and FCO are the three mandatory approvers on each purchase request though other roles are available in the system.

**SYSTEM NAME AND NUMBER:**

Purchase Card Order Request System (PCORS), EPA-88.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Electronic records are maintained at the National Computer Center (NCC), 109 TW Alexander Drive, Research Triangle Park, Durham, NC 27711.

**SYSTEM MANAGER(S):**

Michael Hardy, [hardy.michael@epa.gov](mailto:hardy.michael@epa.gov) at 202-564-7899, Director, OMS-ARM, Strategic IT Investment Staff (SITIS), Environmental Protection Agency, William Jefferson Clinton—North Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Environmental Protection Agency Acquisition Guide, EPAAG—Chapter

13, Subsection 13.3.1, "Government-wide Commercial Purchase Card"; Executive Order 12072 (Aug. 16, 1978); Federal Property and Administrative Services Act of 1949, 40 U.S.C. 121; Executive Order 9397 (Nov. 22, 1943). 42 U.S.C. 290dd-1, 290ee-1; 5 U.S.C. 7901; Executive Order 12564 (Sept. 15, 1986); Office of Federal Procurement Policy Act of 1974, 41 U.S.C. 414; Public Law 107-67, Section 630; Executive Order 9397.5 U.S.C. 1104, 5 U.S.C. 1302, 5 U.S.C. 3301, 5 U.S.C. 3304, 5 U.S.C., 3320, 5 U.S.C. 3327, 5 U.S.C. 3361, and 5 U.S.C. 3393; The Telework Enhancement Act of 2010 (December 9, 2010); and Public Law 111-292.

**PURPOSE(S) OF THE SYSTEM:**

The purpose of the Purchase Card Order Request System (PCORS) is to manage the pre-approval process for purchase card transactions. EPA also uses PCORS to place orders once approved by the three mandatory approvers: The Purchase Cardholder, the Approving Official, and the Funds Certifying Officer.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

EPA employees, contractors, and grantees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Order request ID, requester, request status, office/lab, branch, request type, name, contact, customer account number, email, phone, address, city, state, shipping name, shipping address, cardholder, approving official, Funds Certifying Officer, deputy director, director/division director, human resource official, Information Management Officer (IMO)/IT reviewer, printing reviewer, facilities reviewer, 508 reviewer, property reviewer, health and safety reviewer.

**RECORD SOURCE CATEGORIES:**

The sources of data within PCORS are from the user and other Agency systems, including, the Enterprise Identity Data Warehouse (EIDW)—managed by the Agency's Enterprise IT Service Desk (EISD), the Federal Personnel and Payroll System (FPPS)—managed by the U.S. Department of the Interior, the Electronic Product Environmental Assessment Tool (EPEAT) Site Link—managed by the Green Electronics Council, the Information Management Officer (IMO) Reference List—managed by the EPA Chief Information Officer's Senior Advisory Council, and the System for Award Management (SAM)—managed by U.S. General Services Administration.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

The routine uses below are both related to and compatible with the original purpose for which the information was collected. The following general routine uses apply to this system: A, B, C, D, E, F, G, H, I, J, K, L, and M.

*A. Disclosure for Law Enforcement Purposes:* Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

*B. Disclosure Incident to Requesting Information:* Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

*C. Disclosure to Requesting Agency:* Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

*D. Disclosure to Office of Management and Budget:* Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

*E. Disclosure to Congressional Offices:* Information may be disclosed to a congressional office from the record of an individual in response to an inquiry



from the congressional office made at the request of the individual.

*F. Disclosure to Department of Justice:* Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof;
2. Any employee of the Agency in his or her official capacity;
3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or
4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components.

If a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

*G. Disclosure to the National Archives:* Information may be disclosed to the National Archives and Records Administration in records management inspections.

*H. Disclosure to Contractors, Grantees, and Others:* Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

*I. Disclosures for Administrative Claims, Complaints and Appeals:* Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems

Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

*J. Disclosure to the Office of Personnel Management:* Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

*K. Disclosure in Connection With Litigation:* Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

The two routine uses below (L and M) are required by OMB Memorandum M-17-12.

*L. Disclosure to Persons or Entities in Response to an Actual or Suspected Breach of Personally Identifiable Information:* To appropriate agencies, entities, and persons when (1) EPA suspects or has confirmed that there has been a breach of the system of records, (2) EPA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, EPA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with EPA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

*M. Disclosure to Assist Another Agency in Its Efforts to Respond to a Breach of Personally Identifiable Information:* To another Federal agency or Federal entity, when EPA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

These records are maintained electronically on computer storage

devices which are located at EPA, OMS-ARM, Strategic IT Investment Staff (SITIS). SITIS manages the system, which is located at the National Computer Center (NCC) in Research Triangle Park, North Carolina in access-controlled rooms, areas, and buildings. Digital backups will be maintained at a disaster recovery site. Computer records are maintained in a secure password protected environment. Access to computer records is limited to those who have a need to know. Permission level assignments will allow users access only to those functions for which they are authorized.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

The primary retrieval method is by searching the employee's name and EPA Order Request ID (form ID).

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

PCORS and the requests within PCORS fall under EPA's Records Control Schedule 0042. Cardholders are to download the PDF version of their requests and save them for their records.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Security controls used to protect Personally Identifiable Information (PII) in PCORS are commensurate with those required for an information system rated MODERATE for confidentiality, integrity, and availability, as prescribed in National Institute of Standards and Technology (NIST) Special Publication, 800-53, "Security and Privacy Controls for Information Systems and Organizations," Revision 5.

1. *Administrative Safeguards:* EPA personnel are required to complete annual agency Information Security and Privacy training. EPA personnel are instructed to lock their computers when they leave their desks.

2. *Technical Safeguards:* Electronic records are maintained in a secure, password protected electronic system. PCORS access is limited to authorized, authenticated users integrated with the Agency's single-sign-on. This integration uses the user's LAN credentials to identify the user prior to granting access to the platform and PCORS system. All the system's electronic communication utilizes the agency's Secure Sockets Layer (SSL) encryption for all transactions.

3. *Physical Safeguards:* All records are maintained in secure, access-controlled areas or buildings.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information in this system of records

about themselves are required to provide adequate identification (e.g., driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required, as warranted. Requests must meet the requirements of EPA regulations that implement the Privacy Act of 1974, at 40 CFR part 16.

#### CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

#### NOTIFICATION PROCEDURE:

Individuals who want to know whether this system of records contains information about them should make a written request to the EPA, Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, [privacy@epa.gov](mailto:privacy@epa.gov).

#### EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

#### HISTORY:

None.

#### Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2021-26824 Filed 12-9-21; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8925-01-OMS]

### Cross-Media Electronic Reporting: Authorized Program Revision Approval, Maryland Department of the Environment (MDE)

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the Environmental Protection Agency's (EPA) approval of the Maryland Department of the Environment (MDE) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

**DATES:** EPA approves the authorized program revisions/modifications as of December 10, 2021.

**FOR FURTHER INFORMATION CONTACT:** Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington,

DC 20460, (202) 566-2908, [miller.shirley@epa.gov](mailto:miller.shirley@epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On June 24, 2021, the Maryland Department of the Environment (MDE) submitted an application titled Industrial Pretreatment Program for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed MDE's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve MDE's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**: Part 142: National Primary Drinking Water Regulations Implementation (NPDWR) reporting under CFR 141 MDE was notified of

EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: December 7, 2021.

**Jennifer Campbell,**

Director, Office of Information Management.

[FR Doc. 2021-26825 Filed 12-9-21; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9059-7]

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS)

Filed November 29, 2021 10 a.m. EST  
Through December 6, 2021 10 a.m. EST

Pursuant to 40 CFR 1506.9

*Notice:* Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

*EIS No. 20210182, Draft, USFS, CA,* Social and Ecological Resilience Across the Landscape (SERAL), Comment Period Ends: 01/24/2022, Contact: Kathryn Wilkinson 209-288-6321.

*EIS No. 20210183, Draft, FERC, WI,* Wisconsin Access Project, Comment Period Ends: 01/24/2022, Contact: Office of External Affairs 866-208-3372.

Dated: December 6, 2021.

**Cindy S. Barger,**

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021-26743 Filed 12-9-21; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

**TIME AND DATE:** 10 a.m. on Tuesday, December 14, 2021.

**PLACE:** The meeting is open to the public. Out of an abundance of caution related to current and potential coronavirus developments, the public means to observe this Board meeting will be via a Webcast live on the internet and subsequently made available on-demand approximately one

week after the event. Visit <http://fdic.windrosemedia.com> to view the live event. Visit <http://fdic.windrosemedia.com/index.php?category=FDIC+Board+Meetings> after the meeting. If you need any technical assistance, please visit our Video Help page at: <https://www.fdic.gov/video.html>.

Observers requiring auxiliary aids (e.g., sign language interpretation) for this meeting should call 703-562-2404 (Voice) or 703-649-4354 (Video Phone) to make necessary arrangements.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session to consider the following matters:

#### Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Memorandum and resolution re: Credit Risk Retention Rule Determination—Qualified Residential Mortgage and Related Exemptions.

Memorandum and resolution re: Designated Reserve Ratio for 2022.

Memorandum and resolution re: FDIC Strategic Plan, 2022–2026.

Status report of actions taken pursuant to authority delegated by the Board of Directors.

#### Discussion Agenda

Memorandum and resolution re: Proposed 2022 FDIC Operating Budget.

Briefing: Restoration Plan Semiannual Update.

**CONTACT PERSON FOR MORE INFORMATION:** Requests for further information concerning the meeting may be directed to Debra A. Decker, Deputy Executive Secretary of the Corporation, at 202-898-8748.

Dated at Washington, DC, on December 7, 2021.

Federal Deposit Insurance Corporation.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2021-26865 Filed 12-8-21; 11:15 am]

**BILLING CODE 6714-01-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than January 10, 2022.

*A. Federal Reserve Bank of St. Louis* (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166-2034.

Comments can also be sent electronically to [Comments.applications@stls.frb.org](mailto:Comments.applications@stls.frb.org):

1. *Cross County Bancshares, Inc., Wynne, Arkansas*; to acquire Central Bank, Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, December 7, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021-26778 Filed 12-9-21; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Reporting and Recordkeeping Requirements Associated with Regulation W (FR W; OMB No. 7100-0304).

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

*Report title:* Reporting and Recordkeeping Requirements Associated with Regulation W.

*Agency form number:* FR W.

*OMB control number:* 7100-0304.

*Effective Date:* December 10, 2021.

*Frequency:* Event generated.

*Respondents:* Insured depository institutions and uninsured member banks.

*Estimated number of respondents:* 1.  
*Estimated average hours per response:*

#### Reporting

Section 223.15(b)(4), 2;  
Section 223.31(d)(4), 6;  
Section 223.41(d)(2), 6;  
Section 223.43(b), 10;

#### Recordkeeping

Section 223.42(f), 2;  
Section 223.42(g)(3), 2.

*Estimated annual burden hours:* 28.

*General description of report:* The FR W information collection comprises the reporting requirements of Regulation W that are found in sections 223.15(b)(4), 223.31(d)(4), 223.41(d)(2), and 223.43(b). This information is used to demonstrate compliance with sections 23A and 23B of the Federal Reserve Act (FRA) and to request certain exemptions from the Board. Sections 23A and 23B of the FRA are designed to protect a depository institution from exposure arising from certain transactions with affiliates. They also limit the ability of an insured depository institution to transfer the subsidy arising from access to the federal safety net to such affiliates. Regulation W implements sections 23A and 23B by defining terms used in the statute, explaining the statute's requirements, and exempting certain transactions. The regulation includes provisions requiring the reporting of information to the Board under certain circumstances, including a provision permitting a bank to request from the Board a discretionary exemption from the requirements of section 23A as long as the Board finds the exemption to be in the public interest and consistent with the purposes of section 23A.

*Legal authorization and confidentiality:* Sections 23A and 23B of the FRA authorize the Board to issue these requirements (12 U.S.C. 371c(f) and 371c-1(e)). Compliance with the FR W requirements is required to obtain a benefit.

Information provided on the Loan Participation Renewal notice (Section 223.15(b)(4)) may be considered confidential under exemption 4 of the Freedom of Information Act ("FOIA") as confidential commercial or financial information that is both customarily and actually treated as private (5 U.S.C. 552(b)(4)). Information provided on the Acquisition notice (Section 223.31(d)(4)), the Internal Corporate Reorganization Transaction notice (Section 223.41(d)(2)), and the Section 23A Additional Information request (Section 223.43(b)) generally is not considered confidential, but respondents may request confidential

treatment under exemption 4 of the FOIA if the information is confidential commercial or financial information that is both customarily and actually treated as private. Information collected under the FR W may also be considered confidential under FOIA exemption 8 if it is obtained as part of an examination or supervision of a financial institution (5 U.S.C. 552(b)(8)).

*Current actions:* On September 1, 2021, the Board published a notice in the **Federal Register** (86 FR 49031) requesting public comment for 60 days on the extension, with revision, of the Reporting and Recordkeeping Requirements Associated with Regulation W. The Board revised the FR W information collection to account for two recordkeeping provisions in section 223.42 of Regulation W that had not been previously cleared by the Board under the PRA. The Board did not adopt any forms associated with FR W to address these provisions. The comment period for this notice expired on November 1, 2021. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, December 6, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021-26735 Filed 12-9-21; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping Requirements of Regulation H and Regulation K Associated with the Procedures for Monitoring Bank Secrecy Act Compliance (FR K; OMB No. 7100-0310).

**DATES:** Comments must be submitted on or before February 8, 2022.

**ADDRESSES:** You may submit comments, identified by FR K, by any of the following methods:

- *Agency website:* <https://www.federalreserve.gov/>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the OMB

number or FR number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

#### FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft

reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

### Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

### Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

*Report title:* Recordkeeping Requirements of Regulation H and Regulation K Associated with the Procedures for Monitoring Bank Secrecy Act Compliance.

*Agency form number:* FR K.

*OMB control number:* 7100-0310.

*Frequency:* Annual.

*Respondents:* State member banks; Edge Act and agreement corporations; and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board, except for a federal branch or a federal agency or a state branch that is insured by the

Federal Deposit Insurance Corporation (FDIC).

*Estimated number of respondents:*  
Establish compliance program—1;  
Maintenance of compliance program—906.

*Estimated average hours per response:*  
Establish compliance program—16;  
Maintenance of compliance program—4.

*Estimated annual burden hours:*  
Establish compliance program—16;  
Maintenance of compliance program—3,624.

*General description of report:* Section 208.63 of the Board's Regulation H—Membership of State Banking Institutions in the Federal Reserve System (12 CFR part 208) requires state member banks to establish and maintain in writing procedures reasonably designed to ensure and monitor compliance with the provisions of the Bank Secrecy Act (BSA)<sup>1</sup> and its implementing regulations. Sections 211.5(m)(1) and 211.24(j)(1) of the Board's Regulation K—International Banking Operations (12 CFR part 211) impose those same requirements on Edge Act and agreement corporations and, except for a federal branch or a federal agency<sup>2</sup> or a state branch that is insured by the FDIC, the U.S. branches, agencies, and representative offices of foreign banks supervised by the Board.

*Legal authorization and confidentiality:* The FR K is authorized pursuant to section 8(s) of the Federal Deposit Insurance Act (FDIA), which requires the federal banking agencies, including the Board, to (1) prescribe regulations requiring the institutions they regulate to establish and maintain procedures reasonably designed to assure and monitor compliance with the BSA and (2) to review such procedures during the course of their examinations (12 U.S.C. 1818(s)).<sup>3</sup> The FR K is mandatory.

Because the records required by the FR K will be retained at banking organizations, the Freedom of Information Act (FOIA) would only be implicated if the Board's examiners obtained a copy of the records as part of the examination or supervision of a banking institution. In that case, the records may be exempt from disclosure

<sup>1</sup> See 31 U.S.C. 5311 *et seq.*

<sup>2</sup> The terms "federal agency" and "federal branch" have the same meanings as in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101). See 12 CFR 211.21.

<sup>3</sup> Section 8(s) of the FDIA authorizes the Board to prescribe regulations covering the entities required to comply with section 208.63 of the Board's Regulation H (12 CFR 208.63) and sections 211.5(m)(1) and 211.24(j)(1) of the Board's Regulation K (12 CFR 211.5(m)(1) and 12 CFR 211.24(j)(1)). See 12 U.S.C. 1813(c)(3), 1818(b)(3), and 1818(b)(4).

under exemption 8 of the FOIA, which protects examination materials from disclosure (5 U.S.C. 552(b)(8)). To the extent that information retained in response to the FR K constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, it may also be kept confidential under exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."

Board of Governors of the Federal Reserve System, December 6, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021-26732 Filed 12-9-21; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to the Office of Management and Budget

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Registration of a Securities Holding Company (FR 2082; OMB No. 7100-0347).

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrahi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information

instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

### Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

*Report title:* Registration of a Securities Holding Company.

*Agency form number:* FR 2082.

*OMB control number:* 7100-0347.

*Frequency:* On occasion.

*Respondents:* Certain nonbank companies that own at least one registered securities broker or dealer and which elect to become a supervised securities holding company (SHC).

*Estimated number of respondents:* 1.

*Estimated average hours per response:* 8.

*Estimated annual burden hours:* 8.

*General description of report:* The FR 2082 registration form is used whenever an SHC elects to register to become subject to supervision by the Board pursuant to section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>1</sup>

*The FR 2082 requests the following from the registering SHC:* An organization chart (including all subsidiaries); information regarding certain of the SHC's subsidiaries; shareholder reports and financial statements; information regarding the SHC's shareholders, senior officers and directors; information regarding the methods used by the SHC to monitor and control its operations; information regarding the SHC's foreign subsidiaries that are subject to comprehensive consolidated supervision and the regulatory system in which these foreign subsidiaries operate; and information regarding any other regulatory capital framework to which the SHC is subject. The information collected by the FR 2082 registration form is used by the Federal Reserve System to determine whether the registrant meets the requirements to become a supervised SHC and to complete the registration.

*Legal authorization and confidentiality:* The FR 2082 is authorized by section 618(b)(2)(A) of the Dodd-Frank Act, which requires companies that elect SHC status to register by filing with the Board such information and documents as the

Board, by regulation, may prescribe. Submission of the FR 2082 is required to obtain a benefit.

The information provided on the FR 2082 form and in connection with an SHC's registration is generally considered public. Firms may request certain information provided in connection with the FR 2082 be kept confidential under the Freedom of Information Act (FOIA) in accordance with the Board's Rules Regarding Availability of Information.<sup>2</sup> Confidential commercial or financial information that is both customarily and actually treated as private may be kept confidential under FOIA exemption 4.<sup>3</sup> Personal and biographical information of individuals required as part of the registration may be treated as confidential under FOIA exemption 6 if its disclosure "would constitute a clearly unwarranted invasion of personal privacy."<sup>4</sup>

*Current actions:* On September 1, 2021, the Board published a notice in the **Federal Register** (86 FR 49029) requesting public comment for 60 days on the extension, without revision, of the Registration of a Securities Holding Company. The comment period for this notice expired on November 1, 2021. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, December 6, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021-26736 Filed 12-9-21; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend, without revision, the Reporting Provisions Associated with Regulation TT (FR TT; OMB No. 7100-0369).

**DATES:** Comments must be submitted on or before February 8, 2022.

**ADDRESSES:** You may submit comments, identified by FR TT, by any of the following methods:

- *Agency website:* <https://www.federalreserve.gov/>. Follow the

<sup>2</sup> 12 CFR 261.17.

<sup>3</sup> 12 U.S.C. 552(b)(4).

<sup>4</sup> 12 U.S.C. 552(b)(6).

instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the OMB number or FR number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

#### FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrahi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all

<sup>1</sup> See Dodd-Frank Act, Public Law 111-203, 124 Stat. 1376 (2010).

comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at <https://www.reginfo.gov/public/do/PRAMain>, if approved.

### Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected;
- d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

### Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

*Report title:* Reporting Provisions Associated with Regulation TT.

*Agency form number:* FR TT.

*OMB control number:* 7100–0369.

*Frequency:* On occasion.

*Respondents:* Bank holding companies (BHCs) and savings and loan holding companies (SLHCs) and all nonbank financial companies designated for Board supervision by the Financial Stability Oversight Council (FSOC).

*Estimated number of respondents:* 3.  
*Estimated average hours per response:* 40.

*Estimated annual burden hours:* 120.  
*General description of report:* The Board's Regulation TT—Supervision and Regulation Assessments of Fees (12 CFR part 246) implements the second section 11(s) of the Federal Reserve Act (FRA),<sup>1</sup> which directs the Board to collect assessments, fees, or other charges (collectively, assessments) from BHCs and SLHCs that meet a size threshold and from all nonbank financial companies designated for Board supervision by the FSOC (collectively, assessed companies) in an amount equal to the total expenses the Board estimates are necessary or appropriate to carry out its supervisory and regulatory responsibilities with respect to such companies. Pursuant to Regulation TT, the Board issues an annual notice of assessment to each assessed company. Assessed companies may file a written appeal with the Board regarding the assessment.<sup>2</sup>

*Legal authorization and confidentiality:* The FR TT is authorized pursuant to the second section 11(s) of the FRA, which requires the Board to collect the assessments, as described above, and section 11(i) of the FRA,<sup>3</sup> which provides that the Board shall make all rules and regulations necessary to enable the Board to effectively perform the duties, functions, or services specified in the FRA. The FR TT reporting provisions are required to obtain a benefit.

An assessed company may request confidential treatment of information contained in its appeal pursuant to exemption 4 of the Freedom of Information Act (FOIA), which protects nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent.<sup>4</sup> Determinations of confidentiality based on FOIA exemption 4 would be made on a case-by-case basis.

Board of Governors of the Federal Reserve System, December 6, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–26739 Filed 12–9–21; 8:45 am]

**BILLING CODE 6210–01–P**

<sup>1</sup> 12 U.S.C. 248(s). The second section 11(s) of the Federal Reserve Act was added by section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. There are two subsections of section 11 of the Federal Reserve Act designated as (s). The provision relating to assessments is described as the "second" subsection (s) as it was enacted later in time.

<sup>2</sup> 12 CFR 246.5(b).

<sup>3</sup> 12 U.S.C. 248(i).

<sup>4</sup> 5 U.S.C. 552(b)(4).

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Recordkeeping Provisions Associated with the Guidance on Sound Incentive Compensation Policies (FR 4027; OMB No. 7100–0327).

#### FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghribi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears above.

### Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

*Report title:* Recordkeeping Provisions Associated with the Guidance on Sound Incentive Compensation Policies.

*Agency form number:* FR 4027.

*OMB control number:* 7100–0327.

*Frequency:* As needed.

*Respondents:* U.S. bank holding companies, savings and loan holding companies, state member banks, Edge

Act and agreement corporations, and the U.S. operations of foreign banks with a branch, agency, or commercial lending company subsidiary in the United States (collectively, banking organizations).

*Estimated number of respondents:*

One-time implementation, large institutions: 1; one-time implementation, small institutions: 1; Ongoing maintenance: 5,259.

*Estimated average hours per response:*

One-time implementation, large institutions: 480; one-time implementation, small institutions: 80; ongoing maintenance: 40.

*Estimated annual burden hours:* One-time implementation, large institutions: 480; one-time implementation, small institutions: 80; ongoing maintenance: 210,360.

*General description of report:* The Guidance on Sound Incentive Compensation Policies (the Guidance) is an interagency publication promulgated by the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation that is intended to assist banking organizations in designing and implementing incentive compensation arrangements that do not encourage imprudent risk-taking and that are consistent with the safety and soundness of the organization. The Guidance contains voluntary recordkeeping activities.

The Guidance is based on three key principles. These principles provide that incentive compensation arrangements at a banking organization should:

1. Provide employees incentives that appropriately balance risk and reward;
2. Be compatible with effective controls and risk-management; and
3. Be supported by strong corporate governance, including active and effective oversight by the organization's board of directors.

The recordkeeping provisions of the Guidance are contained within principles 2 and 3.

*Principle 2—Compatibility With Effective Controls and Risk Management*

Pursuant to Principle 2 of the Guidance, a banking organization's risk-management processes and internal controls should reinforce and support the development and maintenance of balanced incentive compensation arrangements. Principle 2 states that banking organizations should create and maintain sufficient documentation to permit an audit of the organization's processes for establishing, modifying, and monitoring incentive compensation arrangements. Additionally, global systemically important bank holding

companies and banking organizations subject to Category II–IV enhanced prudential standards under Regulation YY and foreign banking organizations required to form an intermediate holding company under Regulation YY should maintain policies and procedures that (1) identify and describe the role(s) of the personnel, business units, and control units authorized to be involved in the design, implementation, and monitoring of incentive compensation arrangements, (2) identify the source of significant risk-related inputs into these processes and establish appropriate controls governing the development and approval of these inputs to help ensure their integrity, and (3) identify the individual(s) and control unit(s) whose approval is necessary for the establishment of new incentive compensation arrangements or modification of existing arrangements.

*Principle 3—Strong Corporate Governance*

Pursuant to Principle 3 of the Guidance, banking organizations should have strong and effective corporate governance to help ensure sound compensation practices. Principle 3 states that a banking organization's board of directors should approve and document any material exceptions or adjustments to the organization's incentive compensation arrangements established for senior executives.

*Legal authorization and confidentiality:* The recordkeeping provisions of the Guidance are authorized pursuant to the Board's examination and reporting authorities, located in sections 9, 11(a), 25, and 25A of the Federal Reserve Act, section 5 of the Bank Holding Company Act, section 10(b) of the Home Owners' Loan Act, and section 7(c) of the International Banking Act, and by section 39 of the Federal Deposit Insurance Act, which authorizes the Board to prescribe compensation standards.

Because the recordkeeping provisions are contained within guidance, which is nonbinding, they are voluntary. There are no reporting forms associated with this information collection.

Because the incentive compensation records would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a banking organization, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information

contained in "examination, operating, or condition reports" obtained in the bank supervisory process. In addition, the information may also constitute nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, and thus may be kept confidential by the Board pursuant to exemption 4 of the FOIA.

*Current actions:* On September 1, 2021, the Board published a notice in the **Federal Register** (86 FR 49033) requesting public comment for 60 days on the extension, without revision, of FR 4027. The comment period for this notice expired on November 1, 2021. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, December 6, 2021.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2021–26731 Filed 12–9–21; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS–3420–PN]

#### Medicare and Medicaid Programs: Application From the Joint Commission for Continued Approval of Its Hospital Accreditation Program

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

**ACTION:** Proposed notice.

**SUMMARY:** This proposed notice acknowledges the receipt of an application from The Joint Commission for continued recognition as a national accrediting organization for hospitals that wish to participate in the Medicare or Medicaid programs.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, by January 10, 2022.

**ADDRESSES:** In commenting, please refer to file code CMS–3420–PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <https://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of



Health and Human Services, Attention: CMS-3420-PN, P.O. Box 8016, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3420-PN, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Caecilia Blondiaux, (410) 786-2190.

**SUPPLEMENTARY INFORMATION: Inspection of Public Comments:** All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

## I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a hospital provided certain requirements are met. Section 1861(e) of the Social Security Act (the Act), establishes distinct criteria for facilities seeking designation as a hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations in part 482 specify the minimum conditions that a hospital must meet to participate in the Medicare program.

Generally, to enter into an agreement, a hospital must first be certified by a state survey agency (SA) as complying with the conditions or requirements set forth in part 482 of our regulations.

Thereafter, the hospital is subject to regular surveys by a SA to determine whether it continues to meet these requirements. There is an alternative; however, to surveys by SAs.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at §§ 488.4 and 488.5. The regulations at § 488.5(e)(2)(i) require AOs to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

The Joint Commission's current term of approval for their hospital accreditation program expires July 15, 2022.

## II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period.

We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of The Joint Commission's request for continued approval of its hospital accreditation program. This notice also solicits public comment on whether The Joint Commission's requirements meet or exceed the Medicare conditions of participation (CoPs) for hospitals.

## III. Evaluation of Deeming Authority Request

The Joint Commission submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its hospital accreditation program. This application was determined to be complete on October 6, 2021. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of The Joint Commission will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of The Joint Commission's standards for hospitals as compared with CMS' hospital CoPs.
- The Joint Commission's survey process to determine the following:
  - ++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
  - ++ The comparability of The Joint Commission's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
  - ++ The Joint Commission's processes and procedures for monitoring a hospital found out of compliance with The Joint Commission's program requirements. These monitoring procedures are used only when The Joint Commission identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the SA monitors corrections as specified at § 488.9.
  - ++ The Joint Commission's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
  - ++ The Joint Commission's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.
  - ++ The adequacy of The Joint Commission's staff and other resources, and its financial viability.

++ The Joint Commission's capacity to adequately fund required surveys.

++ The Joint Commission's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ The Joint Commission's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ The Joint Commission's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

#### IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: December 7, 2021.

#### Lynette Wilson,

*Federal Register Liaison, Centers for Medicare & Medicaid Services.*

[FR Doc. 2021-26822 Filed 12-9-21; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier CMS-R-153, CMS-10561 and CMS-10657]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by January 10, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786-4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Drug Use Review (DUR) Program; *Use:* States must provide for a review of drug therapy before each prescription is filled or delivered to a Medicaid patient. This review includes screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Pharmacists must make a reasonable effort to obtain, record, and maintain Medicaid patient profiles. These profiles must reflect at least the patient's name, address, telephone number, date of birth/age, gender, history, *e.g.*, allergies, drug reactions, list of medications, and pharmacist's comments relevant to the individual's drug therapy.

The States must conduct RetroDUR which provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, inappropriate or medically unnecessary care. Patterns or trends of drug therapy problems are identified and reviewed to determine the need for intervention activity with pharmacists and/or physicians. States may conduct interventions via telephone, correspondence, or face-to-face contact.

Annual reports are submitted to CMS for the purposes of monitoring compliance and evaluating the progress of States' DUR programs. The

information submitted by States is reviewed and results are compiled by CMS in a format intended to provide information, comparisons, and trends related to States' experiences with DUR. States benefit from the information and may enhance their programs each year based on State reported innovative practices that are compiled by CMS from the DUR annual reports.

In this 2021 collection of information request, we revised certain FFS, MCO, and Abbreviated MCO survey questions. While a few questions were added to the surveys to address GAO (U.S. Government Accountability Office) recommendations, other aspects of the survey changes include grammar and formatting edits. Overall, we are not revising our currently approved burden estimates.

*Form Number:* CMS–R–153 (OMB control number: 0938–0659); *Frequency:* Yearly, quarterly, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 663; *Total Annual Hours:* 41,004. (For policy questions regarding this collection contact Mike Forman at 410–786–2666.)

**2. Type of Information Collection**  
*Request:* Extension of a currently approved collection; *Title of Information Collection:* Supporting Statement for Essential Community Provider Data Collection to Support QHP Certification for PYs 2022–2024; *Use:* Standards for Essential Community Provider (ECP) requirements are codified at 45 CFR 156.235. Issuers must contract with a certain percentage, as determined by HHS, of the available ECPs in the plan's service area. For plan years 2022–2024, Health and Human Services (HHS) will continue to solicit qualified ECPs to complete and submit the HHS ECP provider petition in order to be added to the HHS ECP list, or update required data fields to remain on the list, resulting in a more robust and accurate listing of the universe of available ECPs from which issuers select to satisfy the ECP standard. HHS will continue to collect such data directly from providers through the online ECP provider petition. *Form Number:* CMS–10561; *Frequency:* Annually; *Affected Public:* Private sector, Business or other for-profits, and Not-for-profit Institutions; *Number of Respondents:* 12,408; *Number of Responses:* 12,408; *Total Annual Hours:* 3,140. (For questions regarding this collection, contact Deborah Hunter at 443–386–3651).

**3. Type of Information Collection**  
*Request:* Revision of a currently approved collection; *Title of Information Collection:* The State

Flexibility to Stabilize the Market Cycle I and II Grant Program Reporting; *Use:* Section 1003 of the Affordable Care Act (ACA) adds a new section 2794 to the Public Health Service Act (PHS Act) entitled, “Ensuring That Consumers Get Value for Their Dollars.” Specifically, section 2794(a) requires the Secretary of the Department of Health and Human Services (the Secretary) (HHS), in conjunction with the States, to establish a process for the annual review of health insurance premiums to protect consumers from unreasonable rate increases. Section 2794(c) directs the Secretary to carry out a program to award grants to States. Section 2794(c)(2)(B) specifies that any appropriated Rate Review Grant funds that are not fully obligated by the end of FY 2014 shall remain available to the Secretary for grants to States for planning and implementing the insurance market reforms and consumer protections under Part A of title XXVII of the (PHS Act). States that are awarded funds under this funding opportunity are required to provide CMS with four quarterly reports and one annual report (except for the last year of the grant) until the end of the grant period detailing the state's progression towards planning and/or implementing the pre-selected market reforms under Part A of Title XXVII of the PHS Act. A final report is due at the end of the grant period. *Form Number:* CMS–10657 (OMB control number: 0938–1366); *Frequency:* Annually and Quarterly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 34; *Total Annual Responses:* 170; *Total Annual Hours:* 2,312. (For policy questions regarding this collection contact Jim Taing at [James.Taing@cms.hhs.gov](mailto:James.Taing@cms.hhs.gov).)

Dated: December 7, 2021.

**William N. Parham, III,**  
*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2021–26816 Filed 12–9–21; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2020–D–1518]

#### Development of Anti-Infective Drug Products for the Pediatric Population; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “Development of Anti-Infective Drug Products for the Pediatric Population.” The purpose of this guidance is to provide general recommendations on the development of anti-infective drug products for pediatric patients. The guidance addresses enrollment strategies, extrapolation of efficacy, safety database, and other considerations to help facilitate pediatric anti-infective drug product development. This guidance finalizes the draft guidance of the same title issued on June 30, 2020.

**DATES:** The announcement of the guidance is published in the **Federal Register** on December 10, 2021.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA-2020-D-1518 for “Development of Anti-Infective Drug Products for the Pediatric Population.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division

of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Hiwot Hiruy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 240-402-0872; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

FDA is announcing the availability of a final guidance for industry entitled “Development of Anti-Infective Drug Products for the Pediatric Population.” The purpose of this guidance is to provide general recommendations on the development of anti-infective drug products for pediatric patients. The guidance addresses enrollment strategies, extrapolation of efficacy, safety database, and other considerations to help facilitate pediatric anti-infective drug product development.

This guidance finalizes the draft guidance of the same title issued on June 30, 2020 (85 FR 39193). FDA provided clarifying edits to the final guidance and included additional information after considering comments received on the draft guidance. Changes from the draft to the final guidance include updates to efficacy extrapolation from adult to pediatric patients (including from one pediatric subpopulation to another), safety data collection, additional considerations for studies, and recommendations for conducting juvenile toxicology studies.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Development of Anti-Infective Drug Products for the Pediatric Population.” It does not establish any rights for any person and is not binding on FDA or the public.

You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

#### **II. Paperwork Reduction Act of 1995**

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR parts 312 and 314 and 21 CFR 201.56 and 201.57 have been approved under OMB control numbers 0910-0014, 0910-0001, and 0910-0572, respectively.

#### **III. Electronic Access**

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, or <https://www.regulations.gov>.

Dated: December 6, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021-26737 Filed 12-9-21; 8:45 am]

**BILLING CODE 4164-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

[Docket No. FDA-2021-N-0918]

#### **Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Labeling Requirements for Prescription Drugs**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by January 10, 2022.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. The OMB control number for this information collection is 0910–0572. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Labeling Requirements for Prescription Drugs**

*OMB Control Number 0910–0572—Revision*

This information collection supports FDA regulations governing the labeling of prescription drugs. The regulations are codified in 21 CFR part 201, subpart B (21 CFR 201.50 through 201.58) and set forth both general requirements, as well as specific content and format requirements. The regulations also provide for requesting a waiver from any labeling requirement and do not apply to biological products that are subject to the requirements of section 351 of the Public Health Service Act.

We are revising the information collection to include burden associated with regulations applicable to medical gas labeling found in § 201.328 (21 CFR 201.328) and established by a final rule in the **Federal Register** of November 18, 2016 (81 FR 81685 at 81694). While we included corresponding changes and adjustments resulting from the final rule to the information collection approved under OMB control number 0910–0139

as it pertains to good manufacturing practice requirements and regulations in part 211 (21 CFR part 211), we did not make corresponding changes and adjustments to this information collection with regard to burden that may be associated with labeling requirements found in § 201.328 (81 FR 81685 at 81694).

To assist respondents with the information collection we continue to develop and issue guidance documents, available from our searchable guidance database at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>. All Agency guidance documents are issued consistent with our good guidance practice regulations found in 21 CFR 10.115, which provide for public comment at any time.

In the **Federal Register** of September 7, 2021 (86 FR 50134), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity/21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Labeling requirements for prescription drugs; §§ 201.56 and 201.57.	414	1.326	549	3,349 .....	1,838,601
Labeling of medical gas containers; § 201.328 ....	260	1,663	432,380	0.17 (10 minutes) .....	73,505
Total .....	.....	.....	432,929	.....	1,912,106

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

New drug product and biological product applicants must: (1) Design and create prescription drug labeling containing “Highlights,” “Contents,” and “Full Prescribing Information”; (2) test the designed labeling (for example, to ensure that the designed labeling fits into carton-enclosed products); and (3) submit it to FDA for approval. Based on our experience with the information collection, we estimate 414 applicants will prepare an average of 549 prescription drug labels and assume it will require 3,349 hours to design, test, and submit to FDA as part of a new drug application or a biologics license application. Similarly, new medical gas containers must meet applicable requirements found in part 211, as well as specific labeling requirements in § 201.328. We estimate that 260 respondents will incur burden for the design, testing, production, and submission of labeling for new medical gas containers as required under

§ 201.328 and assume an average of 10 minutes (0.17) is required for these activities.

Our estimated burden for the information collection reflects an overall increase resulting from an increase in submissions for new product labeling as well as from the revision to include burden associated with requirements in § 201.328.

Dated: December 6, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021–26730 Filed 12–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA–2021–D–1096]

**Chronic Rhinosinusitis With Nasal Polyps: Developing Drugs for Treatment; Draft Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Chronic Rhinosinusitis with Nasal Polyps: Developing Drugs for Treatment.” The purpose of this draft guidance is to assist sponsors in the clinical development of drugs for the treatment of chronic rhinosinusitis with nasal polyps (CRSwNP). Specifically, this

draft guidance addresses FDA's current recommendations regarding trial design, safety, and efficacy considerations for CRSwNP clinical trials.

**DATES:** Submit either electronic or written comments on the draft guidance by February 8, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2021-D-1096 for "Chronic Rhinosinusitis with Nasal Polyps: Developing Drugs for Treatment." Received comments will be placed in the docket and, except for those submitted as "Confidential

Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send

one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

#### **FOR FURTHER INFORMATION CONTACT:**

Rekha Jhamnani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3395, Silver Spring, MD 20993-0002, 301-796-5636; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

FDA is announcing the availability of a draft guidance for industry entitled "Chronic Rhinosinusitis with Nasal Polyps: Developing Drugs for Treatment." This draft guidance provides recommendations for sponsors developing drugs for the treatment of CRSwNP. Specifically, this draft guidance represents FDA's current recommendations regarding trial population, design, effectiveness, statistical analysis, and safety for drugs being developed for the treatment of CRSwNP. This draft guidance does not address the clinical development of drugs or therapeutic biological products for the treatment of chronic rhinosinusitis without nasal polyps or allergic fungal rhinosinusitis.

Chronic rhinosinusitis is characterized by inflammation of the nasal mucosa and paranasal sinuses and can be further divided into chronic rhinosinusitis with nasal polyps without nasal polyps. Nasal polyps are inflammatory hyperplastic growths that protrude into the nasal passages. Symptoms of chronic rhinosinusitis with nasal polyps include nasal congestion, nasal discharge, facial pain or pressure, and loss of smell. Nasal polyps have associated morbidity that can have substantial effect on day-to-day functioning. Treatment goals include reduction of symptoms, systemic corticosteroid use, and surgery as well as improved quality of life. Because of differences in natural history and treatment between chronic rhinosinusitis with and without nasal polyps, this draft guidance specifically addresses aspects of trial design, safety, and efficacy assessment for CRSwNP.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA

on “Chronic Rhinosinusitis with Nasal Polyps: Developing Drugs for Treatment.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

While this draft guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this draft guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 for investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR parts 314 and 601 for applications for FDA approval to market a new drug or biologic have been approved under OMB control numbers 0910–0001 and 0910–0338, respectively.

## III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information/biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: December 6, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021–26733 Filed 12–9–21; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2020–D–2307]

#### **Real-World Data: Assessing Electronic Health Records and Medical Claims Data To Support Regulatory Decision-Making for Drug and Biological Products; Draft Guidance for Industry; Reopening of the Comment Period**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability; reopening of the comment period.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is reopening the comment period for the document entitled “Real-World Data: Assessing Electronic Health Records and Medical Claims Data to Support Regulatory Decision-Making for Drug and Biological Products; Draft Guidance for Industry,” published in the **Federal Register** on September 30, 2021. The Agency is taking this action to allow interested persons additional time to submit comments.

**DATES:** FDA is reopening the comment period on the draft guidance published September 30, 2021 (86 FR 54219). Submit either electronic or written comments by January 24, 2022.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 24, 2022. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 24, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### *Electronic Submissions*

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA–2020–D–2307 for “Real-World Data: Assessing Electronic Health Records and Medical Claims Data to Support Regulatory Decision-Making for Drug and Biological Products; Draft Guidance for Industry.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the 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:**

Dianne Paroan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3326, Silver Spring, MD 20993-0002, 301-796-2500, [dianne.paroan@fda.hhs.gov](mailto:dianne.paroan@fda.hhs.gov); or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911, [stephen.ripley@fda.hhs.gov](mailto:stephen.ripley@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 30, 2021 (86 FR 54219), FDA published a notice of availability with a 60-day period to provide comments on the draft guidance entitled "Real-World Data: Assessing Electronic Health Records and Medical Claims Data to Support Regulatory Decision-Making for Drug and Biological Products; Draft Guidance of Industry." This draft guidance is intended to provide sponsors, researchers, and other interested stakeholders with considerations when proposing to use electronic health records or medical claims data in clinical studies to support a regulatory decision for effectiveness or safety. Interested persons were originally given until November 29, 2021, to submit comments to the docket. FDA has received requests to extend the comment period to allow sufficient time to develop and submit meaningful comments. FDA has considered the requests and is extending the comment period until January 24, 2022. The Agency believes that reopening the comment period for 45 additional days allows adequate time for interested persons to submit comments.

Dated: December 2, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021-26699 Filed 12-9-21; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2017-D-2802]

**Chemistry, Manufacturing, and Controls Postapproval Manufacturing Changes for Specified Biological Products To Be Documented in Annual Reports; Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled "CMC Postapproval Manufacturing Changes for Specified Biological Products to Be Documented in Annual Reports." This guidance provides recommendations to holders of biologics license applications (BLAs) for specified biological products regarding the types of changes to be documented in annual reports. Specifically, the guidance describes chemistry, manufacturing, and controls (CMC) postapproval manufacturing changes that FDA generally considers to have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product. Under FDA regulations, such minor changes in the product, production process, quality controls, equipment, facilities, or responsible personnel must be documented by applicants in an annual report. The guidance finalizes the draft guidance of the same title dated August 2017.

**DATES:** The announcement of the guidance is published in the **Federal Register** on December 10, 2021.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2017-D-2802 for "CMC Postapproval Manufacturing Changes for Specified Biological Products To Be Documented in Annual Reports." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not



in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Michail Alterman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4245, Silver Spring, MD 20993, 240-402-9355, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

FDA is announcing the availability of a guidance for industry entitled “CMC Postapproval Manufacturing Changes for Specified Biological Products To Be Documented in Annual Reports.” Applicants must notify FDA of a change to an approved BLA in accordance with all statutory and regulatory

requirements—including section 506A of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 356a) and § 601.12 (21 CFR 601.12). Section 506A of the FD&C Act provides requirements for making and reporting manufacturing changes to an approved application or license and for distributing a drug made with such changes. Under § 601.12, each postapproval change in the product, production process, quality controls, equipment, facilities, or responsible personnel established in an approved BLA is categorized into one of three reporting categories:

- **Major change:** Applicants must submit and receive FDA approval of a supplement to the BLA before the product produced with the manufacturing change is distributed.
- **Moderate change:** Applicants must submit a supplement at least 30 days before the product is distributed or, in some cases, the product may be distributed immediately upon FDA’s receipt of the supplement.
- **Minor change:** Applicants may proceed with the change but must notify FDA of the change in an annual report.

This guidance provides recommendations for reporting certain changes in an annual report. It discusses the contents of an annual report notification and lists examples of postapproval manufacturing changes for BLAs that FDA generally considers to have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product.

This guidance finalizes the draft guidance of the same title issued on August 9, 2017 (82 FR 37232) in the **Federal Register**. FDA considered comments received on the draft guidance as the guidance was finalized. Based on comments received, FDA updated the guidance with additional manufacturing examples and made editorial changes to improve clarity.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “CMC Postapproval Manufacturing Changes for Specified Biological Products To Be Documented in Annual Reports.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

##### **II. Paperwork Reduction Act of 1995**

While this guidance contains no collection of information, it does refer to previously approved FDA collections of

information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 601.12 have been approved under OMB control number 0910-0338; and the collections of information in 21 CFR parts 210 and 211 have been approved under OMB control number 0910-0139.

##### **III. Electronic Access**

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: December 6, 2021.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2021-26734 Filed 12-9-21; 8:45 am]

**BILLING CODE 4164-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Health Resources and Services Administration**

#### **Additional Comment Period for Updated HRSA-Supported Women’s Preventive Services Guidelines Statement on Breastfeeding Services and Supplies**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** On August 20, 2021, HRSA published a notice soliciting public comments regarding proposed updated draft recommendations to the HRSA-Supported Women’s Preventive Services Guidelines (Guidelines) in the areas of Well-Women Preventive Visits, Counseling for Sexually Transmitted Infections, and Breastfeeding Services and Supplies, which, when accepted by HRSA, are required to be covered without cost-sharing by certain health insurance issuers under the Public Health Service Act. The updated draft recommendation statements were developed through a national cooperative agreement, the Women’s Preventive Services Initiative (WPSI), by

the American College of Obstetricians and Gynecologists (ACOG). Since the publication of that notice, WPSI has further updated its recommendation statement on Breastfeeding Services and Supplies. HRSA encourages members of the public to review this revised updated recommendation statement and provide comments for consideration.

**DATES:** Members of the public are invited to provide written comments no later than December 20, 2021. All comments received on or before this date will be reviewed and considered by the WPSI Multidisciplinary Steering Committee.

**ADDRESSES:** Members of the public interested in providing comments on the draft recommendation statements can do so by accessing the initiative's web page at <https://www.womenspreventivehealth.org/>.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Sherman, HRSA, Maternal and Child Health Bureau, telephone (301) 443-8283, email: [wellwomancare@hrsa.gov](mailto:wellwomancare@hrsa.gov).

**SUPPLEMENTARY INFORMATION:** HRSA established the Guidelines in 2011 based on a study and recommendations by the Institute of Medicine, now known as the National Academy of Medicine, developed under a contract with the Department of Health and Human Services. Under section 1001(5) of the Patient Protection and Affordable Care Act, Public Law 111-148, which added section 2713 to the Public Health Service Act, 42 U.S.C. 300gg-13, the preventive care and screenings set forth in the Guidelines are required to be covered without cost-sharing by certain health insurance issuers. Since 2011, there have been advancements in science and gaps identified in these guidelines, including a greater emphasis on practice-based clinical considerations. Accordingly, since March 2016, HRSA has supported cooperative agreements with ACOG to convene a coalition representing clinicians, academics, and consumer-focused health professional organizations to conduct a rigorous review of current scientific evidence and make recommendations to HRSA regarding updates to the Guidelines to improve adult women's health across the lifespan. HRSA then decides whether to support, in whole or in part, the recommended updates to the Guidelines. Under the cooperative agreement, ACOG formed WPSI, consisting of an Advisory Panel and two expert committees, the Multidisciplinary Steering Committee (MSC) and the Dissemination and Implementation Steering Committee

(DISC), which are comprised of a broad coalition of organizational representatives who are experts in disease prevention and women's health issues. Through oversight by the Advisory Panel, MSC supports the development and implementation of the Guidelines through the review of existing evidence and recommendation development. Specifically, the MSC examines the evidence to develop new and update existing recommendations for women's preventive services. DISC takes the HRSA-approved recommendations, developed by the MSC, and works to disseminate them through the development of implementation tools and resources for both patients and practitioners.

In March 2021, ACOG engaged in a process to consider and review new information and evidence to determine whether to recommend updates to the Guidelines. ACOG bases its recommended updates to the Guidelines on review and synthesis of existing clinical guidelines and new scientific evidence, following the National Academy of Medicine standards for establishing foundations for and rating strengths of recommendations, articulation of recommendations, as well as external reviews. Additionally, ACOG incorporates processes to assure opportunity for public comment, including participation by patients and consumers, in the development of the updated Guideline recommendations.

This notice solicits comments from the public on a revised draft recommendation statement on Breastfeeding Supplies and Services. The updated draft recommendation statement that was published on August 20, 2021 and the revised recommendation statement that HRSA recently received from ACOG are provided below. WPSI will consider and, as necessary, incorporate additional public comment in its recommendation statement. HRSA will then decide whether to support, in whole or in part, the recommended updates to the Guidelines.

#### **Clinical Recommendation Statement as Published on August 20, 2021**

The MSC updated clinical recommendation included consultative services to optimize successful initiation and maintenance of breastfeeding: "The WPSI recommends comprehensive lactation support services (including consultation, counseling, education, and breastfeeding equipment and supplies) during the antenatal, perinatal, and postpartum periods to optimize the

successful initiation and maintenance of breastfeeding."

#### **Revised Clinical Recommendation Statement**

The MSC has made two further updates to the clinical recommendation statement for breastfeeding. The first addresses provider type in the provision of breastfeeding services to reflect that breastfeeding education can be provided by clinicians and through peer support services. The second update moves a paragraph on breastfeeding equipment and supplies from the implementation section of the guideline into the clinical recommendation component, making it a substantive addition to the Guidelines with corresponding effect under Section 2713. As revised, the clinical recommendation statement provides: "The WPSI recommends comprehensive lactation support services (including consultation; counseling; education by clinicians and peer support services; and breastfeeding equipment and supplies) during the antenatal, perinatal, and postpartum periods to optimize the successful initiation and maintenance of breastfeeding. Breastfeeding equipment and supplies include, but are not limited to, double electric breast pumps (including pump parts and maintenance) and breast milk storage supplies. Access to double electric pumps should be a priority to optimize breastfeeding and should not be predicated on prior failure of a manual pump. Breastfeeding equipment may also include equipment and supplies as clinically indicated to support dyads with breastfeeding difficulties and those who need additional services."

Members of the public can view the complete revised updated draft recommendation statement by accessing the initiative's web page at <https://www.womenspreventivehealth.org/>.

**Diana Espinosa,**

*Acting Administrator.*

[FR Doc. 2021-26700 Filed 12-9-21; 8:45 am]

**BILLING CODE 4165-15-P**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

[Document Identifier: OS-0990-NEW]

#### **Agency Father Generic Information Collection Request. 30-Day Public Comment Request**

**AGENCY:** Office of the Secretary, Health and Human Service, HHS.

**ACTION:** Notice and request for comments. Office of the Assistant Secretary for Public Affairs is requesting

OMB approval for a new father Generic Clearance.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

**DATES:** Comments on the ICR must be received on or before January 10, 2022.

**ADDRESSES:** Submit your comments to *OIRA\_submission@omb.eop.gov* or via facsimile to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795-7714. When requesting information, please include the document identifier 0990-New-30D and project title for reference.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Title of the Collection:* The National Hypertension Control Initiative.

*Type of Collection:* Father Generic.

*OMB No.:* 0990-NEW—within OS/ Office of Minority and Health.

*Abstract:* As part of the federal response to COVID-19, the U.S. Department of Health and Human Services (HHS) has funded a new initiative involving two cooperative agreements with the American Heart Association (AHA) to improve COVID-19-related health outcomes by addressing hypertension (high blood pressure) among racial and ethnic minority populations.

The \$32 million project from the HHS Office of Minority Health (OMH) and the Health Resources and Services Administration (HRSA) Bureau of Primary Health Care will support the implementation of the National Hypertension Control Initiative (NHCI), a national initiative to improve blood pressure control among the most at-risk populations, including racial and ethnic minorities.

The NHCI will support 350 participating HRSA-funded health centers by providing patient and provider education and training for effective hypertension control as well as integration of remote blood pressure monitoring technology into the treatment of hypertension for patients served by participating health centers. The project will also utilize the American Heart Association's targeted media campaigns and existing partnerships with community-based organizations (CBOs) to help reach Black, Latino, and other impacted communities with (i) culturally and linguistically appropriate messages, (ii)

access to blood pressure screenings, and (iii) connection to health centers to encourage proper treatment and management of hypertension of screened individuals. This initiative serves to increase the number of adult patients with controlled hypertension and reduce the potential risk of COVID-related health outcomes.

AHA aims to conduct an evaluation to assess the feasibility of the implementation of each of the three NHCI strategies. The findings of this evaluation will inform the improvement and tailoring of AHA's communication approaches about the importance of and techniques for improving blood pressure control, including the benefits of accurately measuring, rapidly acting, and having a patient-focused approach to blood pressure control.

**Methodology**

The evaluation of the NHCI project will use a mixed methods design, integrating both quantitative and qualitative data collection and analyses. Three main goals of data collection will be to: (1) Track and monitor systems change implementation process information from Community Health Centers (CHCs) on a quarterly basis, (2) assess the capacity of NHCI partners to implement the NHCI project, their needs, the strengths and weaknesses of the systems change approach, and the feasibility of the implementation of the NHCI in their organizations and communities, and (3) assess the reach and success of NHCI project strategies implemented by partners.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Community and Social Service Occupations (CBO quarterly data entry into MERD) .....	53	4	30/60	106
Consumers (ETS health lesson learning questionnaires) .....	63,600	1	10/60	10,600
Health care professionals (quarterly data entry in MERD) .....	350	4	1.5	2,100
Health care professionals (annual focus group) .....	16	1	1.5	24
Community and Social Service Occupations (annual focus group) .....	16	1	1.5	24
Total .....	64,035	.....	.....	12,854

**Sherrette A. Funn,**  
*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*

[FR Doc. 2021-26805 Filed 12-9-21; 8:45 am]

**BILLING CODE 4150-29-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute on Drug Abuse; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Mechanistic Studies on the Impact of Social Inequality on the Substance Use Trajectory.

*Date:* February 3, 2022.

*Time:* 10:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Rebekah Feng, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 3WFN 09C49, MSC 6021, 301 North Stonestreet Avenue, Rockville, MD 20892, (301) 827-7245, [rebekah.feng@nih.gov](mailto:rebekah.feng@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 7, 2021.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-26819 Filed 12-9-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Small Business Innovation Research (SBIR) Phase II Program Contract Solicitation (PHS 2020-1) Topic 086 Development of rapid fungal diagnostics for select endemic dimorphic fungi (N01).

*Date:* January 6, 2022.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F37, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Scott Jakes, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F37, Rockville, MD 20852, (240) 669-5931, [jakesse@mail.nih.gov](mailto:jakesse@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 7, 2021.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-26820 Filed 12-9-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Small Vessel VCIID Biomarkers Validation Consortium Coordinating Center (U24) Review Meeting.

*Date:* January 6, 2022.

*Time:* 11:00 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Mir Ahamed Hossain, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-

9529, (301) 496-9223, [mirahamed.hossain@nih.gov](mailto:mirahamed.hossain@nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Neuroscience Development for Advancing the Careers of a Diverse Research Workforce (R25).

*Date:* January 11, 2022.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* DeAnna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-496-9223, [deanna.adkins@nih.gov](mailto:deanna.adkins@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 7, 2021.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-26818 Filed 12-9-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2021-0051]

### Identifying Recommendations To Support the Work of the Interagency Task Force on the Reunification of Families

**AGENCY:** Department of Homeland Security.

**ACTION:** Request for public input.

**SUMMARY:** The Department of Homeland Security (DHS), on behalf of the Interagency Task Force on the Reunification of Families (Task Force), is seeking comments from the public on recommendations for ways to minimize the separation of migrant parents and legal guardians and children entering the United States, consistent with the law. This input will help in the drafting of a report required by the Executive order titled "Establishment of Interagency Task Force on the Reunification of Families."

**DATES:** Comments must be received on or before January 10, 2022.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2021-0051, through the Federal eRulemaking Portal: <https://www.regulations.gov>. Comments

submitted in any other manner, including emails or letters sent to Task Force officials, may not be reviewed by the Task Force. The Task Force cannot accept any comments that are hand delivered or couriered. In addition, the Task Force cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. Due to COVID-19, the Task Force is also not accepting mailed comments at this time. If you cannot submit your comment by using <https://www.regulations.gov>, please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721-3000 for alternate instructions.

**FOR FURTHER INFORMATION CONTACT:** Carrie Anderson, Director of Policy for the Family Reunification Task Force, U.S. Department of Homeland Security, (240) 721-3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

Interested persons are invited to comment on this notice by submitting input using the method identified in the **ADDRESSES** section above.

*Instructions:* All comments received may be posted without change to <https://www.regulations.gov> including any personal information provided.

*Docket:* For access to the docket to view comments, go to <https://www.regulations.gov/>.

**II. Background**

*A. Executive Order 14011*

On February 2, 2021, President Biden signed Executive Order 14011 (E.O. 14011), Establishment of Interagency Task Force on the Reunification of Families, condemning the human tragedy that occurred when application of our immigration laws resulted in the separation of children from their parents or legal guardians (families), including through the use of the Zero-Tolerance Policy, and committing to protect family unity so that children entering the United States are not separated from their families, except in the most extreme circumstances when necessary for the safety and well-being of the child or when required by law.<sup>1</sup>

As early as February 2017, some Trump administration officials began discussing the separation of parents from their children at the U.S.-Mexico border. In the summer of 2017, in the El Paso, Texas Border Patrol Sector, there was an increase in the number of prosecutions for illegal entry which resulted in an increase in the number of family separations within that sector. On April 6, 2018, the Department of Justice (DOJ) formally announced the Zero-Tolerance Policy, which was implemented through a memorandum issued by then-Attorney General Jeff Sessions to all U.S. Attorney's Offices along the Southwest border. Under this policy, DOJ would prosecute all referrals of individuals for 8 U.S.C. 1325 (unauthorized entry), to the extent practicable, even though it meant the separation of parents and children.

On May 5, 2018, based on guidance from DHS, U.S. Customs and Border Protection (CBP) began to refer an increased number of individuals to DOJ for criminal prosecution for entering the United States without authorization, including parents who entered with their minor children. When parents were referred for criminal prosecution under 8 U.S.C. 1325, they were remanded to the custody of the U.S. Marshals Service for the duration of their criminal proceedings. Their accompanying children were then classified as unaccompanied children (UC) and therefore transferred to the care and custody of the U.S. Department of Health and Human Services, Office of Refugee Resettlement (HHS-ORR).

On June 20, 2018, President Trump signed Executive Order 13841, Affording Congress an Opportunity to Address Family Separation, to maintain family unity during the pendency of immigration and criminal proceedings relating to 8 U.S.C. 1325 prosecutions for unauthorized entry, where appropriate and consistent with the law.<sup>2</sup>

The separations of parents and children were challenged in federal court, and on June 26, 2018, a federal district court ordered the reunification of a certified class of parents with their children. The court later expanded the class to include parents who entered the United States with their child(ren) on or after July 1, 2017, were separated from their children, and whose children were not in HHS-ORR custody on June 26, 2018.

The Department, including Task Force agency members, is involved in multiple active litigation cases involving separated families, but that

litigation is ongoing and outside the scope of this request for public information.

*B. Scope and Functions of the Task Force*

E.O. 14011 established the Task Force, which focuses on family separations that occurred at the U.S.-Mexico border between January 20, 2017, and January 20, 2021, in connection with the operation of the Zero-Tolerance Policy. E.O. 14011 defines "Zero-Tolerance Policy" as the policy discussed in the Attorney General's memorandum of April 6, 2018, entitled, "Zero-Tolerance for Offenses Under 8 U.S.C. 1325(a)," and any other related policy, program, practice, or initiative resulting in the separation of children from their families at the United States-Mexico border. E.O. 14011 identifies the Task Force's key functions as the following:

- Identify all children who were separated by DHS from their families at the United States-Mexico border between January 20, 2017 and January 20, 2021 as a result of the Zero-Tolerance Policy;
- Facilitate and enable the reunification of those children with their families;
- Provide recommendations regarding the provision of additional services and support for the children and their families, including behavioral health services with a focus on trauma-informed care; and
- Provide regular reports to the President, including: An initial progress report no later than 120 days after the date of E.O. 14011; interim progress reports every 60 days thereafter; a report containing recommendations to ensure that the Federal Government will not repeat the policies and practices leading to the separation of families at the border no later than 1 year after the date of E.O. 14011; and a final report when the Task Force has completed its mission.

The Task Force leverages the authorities and functions of the Secretaries of Homeland Security, State, and Health and Human Services, the Attorney General, and other key government officials to complete the functions ordered in E.O. 14011.

*C. Recommendations Report*

Section 4(c)(iii) of E.O. 14011 requires the Task Force to provide the President "a report containing recommendations to ensure that the Federal Government will not repeat the policies and practices leading to the separation of families at the border, no later than 1 year after the date of this order."

<sup>1</sup> 86 FR 8273 (published Feb. 5, 2021).

<sup>2</sup> 83 FR 29435 (published Jun. 25, 2018).

### III. Request for Input

E.O. 14011 directs the Task Force to coordinate its work, as appropriate and consistent with applicable law, with relevant stakeholders, including domestic and international non-governmental organizations, and representatives of the children and their families. Based on this directive, the Task Force is soliciting input and recommendations to minimize the separation of migrant parents and legal guardians and children entering the United States, consistent with law. The Task Force welcomes thoughts on the causes of family separations that occurred incident to the Zero-Tolerance policy as well as policies, procedures, or regulations that may minimize the separation of migrant parents and legal guardians and children entering the United States, consistent with law. This is not an exhaustive list of the types of comments the Task Force is interested in receiving on this important topic and the public may provide additional thoughts and concerns.

### IV. Review of Public Feedback

The Task Force will use the public's feedback to help draft recommendations to the President on how to prevent the Federal Government in the future from separating children from their parents except in the most extreme circumstances where a separation is clearly necessary for the safety and well-being of the child or is required by law, as directed in E.O. 14011. Public input provided in response to this notice does not bind the Task Force to any further actions, to include publishing a formal response or agreement to initiate a recommended change. The Task Force will consider the feedback and include the feedback in its report at its sole discretion.

#### Disclaimer

This notice is for information and planning purposes only and should not be construed as a solicitation or as creating or resulting in any obligation on the part of DHS.

Dated: December 6, 2021.

#### Michelle Brané,

Executive Director, Interagency Task Force on the Reunification of Families, U.S. Department of Homeland Security.

[FR Doc. 2021-26691 Filed 12-9-21; 8:45 am]

BILLING CODE 9110-9B-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-R3-ES-2021-0126; FXES1114030000-212]

#### Aitkin-Carlton Counties Habitat Conservation Plan, Aitkin and Carlton Counties, Minnesota; Receipt of an Application for an Incidental Take Permit, Proposed Habitat Conservation Plan; Categorical Exclusion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of documents; request for comments and information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from Aitkin and Carlton Counties for an incidental take permit (ITP) under the Endangered Species Act for the proposed Aitkin-Carlton Counties Habitat Conservation Plan (HCP). If approved, the ITP would authorize the incidental take of three bat species for a 25-year period. The applicant has prepared an HCP to cover a suite of activities associated with continued forest and habitat management. We request public comment on the application, which includes the applicant's proposed HCP, and on the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

**DATES:** We will accept comments received or postmarked on or before January 10, 2022.

#### ADDRESSES:

*Document availability:* Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS-R3-ES-2021-0126 at <https://www.regulations.gov>.

*Comment submission:* In your comment, please specify whether your comment addresses the proposed HCP, draft environmental action statement, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Online:* <https://www.regulations.gov>. Search for and submit comments on Docket No. FWS-R3-ES-2021-0126.

- *U.S. mail:* Submit comments to Public Comments Processing, Attn:

Docket No. FWS-R3-ES-2021-0126; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041-3803.

#### FOR FURTHER INFORMATION CONTACT:

Shauna Marquardt, Deputy Field Supervisor, Minnesota-Wisconsin Ecological Services Field Office, U.S. Fish and Wildlife Service, 4101 American Boulevard East, Bloomington, MN 55425; telephone: 573-239-3293; or Andrew Horton, Regional HCP Coordinator, U.S. Fish and Wildlife Service-Interior Region 3, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458; telephone: 612-713-5337.

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Aitkin and Carlton Counties (applicants) for an incidental take permit (ITP) under the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*), for a proposed habitat conservation plan (HCP) for the northern long-eared bat, little brown bat, and tricolored bat. The applicants conduct habitat and forest management activities on county-managed lands in Aitkin and Carlton Counties, Minnesota. The applicants have prepared an HCP that describes their continued habitat and forest management operations and measures that the applicants would implement to avoid, minimize, and mitigate incidental take of the covered species. The HCP proposes to create, enhance, and maintain more than one-third of county-managed forest lands as covered species' habitat to offset impacts of habitat and forest management activities to the covered species.

If approved, the ITP would be for a 25-year period and would authorize the incidental take of the following three species: northern long-eared bat (federally listed as threatened), little brown bat (currently under discretionary review), and tricolored bat (petitioned for listing under the ESA). The applicant has prepared an HCP that describes the actions and measures that the applicants would implement to avoid, minimize, and mitigate incidental take of the three species. We request public comment on the application, which includes the applicant's proposed HCP, and on the Service's preliminary determination that this HCP qualifies as "low-effect," categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make

this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

### Background

Section 9 of the ESA and its implementing regulations prohibit the “take” of animal species listed as endangered or threatened. Take is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

### Applicants’ Proposed Project

The applicants request a 25-year ITP to take the federally threatened northern long-eared bat (*Myotis septentrionalis*) and two species petitioned for Federal listing: The little brown bat (*Myotis lucifugus*) and the tricolored bat (*Perimyotis subflavus*). The applicant determined that take is reasonably certain to occur incidental to enactment of forest and habitat management activities on 3 percent or less of county-managed forest lands annually over a 10-year rolling period. The proposed conservation strategy in the applicant’s proposed HCP is designed to avoid, minimize, and mitigate the impacts of the habitat and forest management on the covered species. The biological goals and objectives are to minimize potential take of northern long-eared, little brown, and tricolored bats through minimization measures and to provide habitat conservation measures for the covered species to offset any impacts from the implementation of habitat and forest management activities.

The authorized level of take from the project is up to a total of three northern long-eared bats, three little brown bats, and three tricolored bats over the 25-year project duration, and lost reproductive potential is anticipated to result in a loss of five additional northern long-eared bats, seven little brown bats, and seven tricolored bats over the 25-year period. To offset the impacts of the taking of northern long-eared, little brown, and tricolored bats, the applicants propose to avoid habitat-loss-related impacts from habitat and forest management by instituting

avoidance measures during the management process, such as restricting forest management activities to 3 percent or less of the county-managed forests over a 10-year rolling period, limiting forest management during the bat active season to 34 percent or less of the total annual harvest and 10 percent or less during the pup season, and leaving buffers around roost trees. Beneficial and net effects of the conservation strategy include the successful management of forests, which protect potential habitat for bats, and the creation, restoration, and maintenance of maternity roost and foraging habitat on one-third of the county-managed forest lands (a minimum of 85,387 acres), and other specific measures that minimize or avoid effects to the covered species.

### National Environmental Policy Act

The Service has made a preliminary determination that the applicant’s project and the proposed mitigation measures would individually and cumulatively have a minor or negligible effect on the covered species and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion, and the HCP would be low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) incremental impacts from the Federal action that, when added to other past, present, and reasonable foreseeable future actions, would not result in significant cumulative effects to environmental values or resources over time.

### Next Steps

The Service will evaluate the permit application and the comments received to determine whether the application meets the requirements of section 10(a) of the ESA. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

### Public Comments

The Service invites comments and suggestions from all interested parties on the proposed HCP and screening form during a 30-day public comment

period (see **DATES**). In particular, information and comments regarding the following topics are requested:

1. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and
2. Any threats to the northern long-eared bat, little brown bat, or tricolored bat that may influence their populations over the life of the ITP that are not addressed in the proposed HCP; and
3. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

You may submit comments by one of the methods shown under **ADDRESSES**. We will post on <https://regulations.gov> all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

### Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500–1508 (2020); 43 CFR part 46).

### Lori Nordstrom,

*Assistant Regional Director, Ecological Services.*

[FR Doc. 2021–26828 Filed 12–9–21; 8:45 am]

**BILLING CODE 4333–15–P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[Docket No. FWS–HQ–IA–2021–0102;  
FXIA1671090000–212–FF09A30000]

**Marine Mammal Protection Act and  
Wild Bird Conservation Act; Receipt of  
Permit Applications**

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Notice of receipt of permit  
applications; request for comments.

**SUMMARY:** We, the U.S. Fish and  
Wildlife Service (Service), invite the  
public to comment on foreign or native  
species for which the Service has  
jurisdiction under the Marine Mammal  
Protection Act (MMPA) and foreign bird  
species covered under the Wild Bird  
Conservation Act (WBCA). With some  
exceptions, the MMPA and WBCA  
prohibit activities with listed species  
unless Federal authorization is issued  
that allows such activities. These Acts  
also require that we invite public  
comment before issuing permits for any  
activity they otherwise prohibit with  
respect to any species.

**DATES:** We must receive comments by  
January 10, 2022.

**ADDRESSES:** *Obtaining Documents:* The  
application, application supporting  
materials, and any comments and other  
materials that we receive will be  
available for public inspection at  
<https://www.regulations.gov> in Docket  
No. FWS–HQ–IA–2021–0102.

*Submitting Comments:* When  
submitting comments, please specify the  
name of the applicant and the permit  
number at the beginning of your  
comment. You may submit comments  
by one of the following methods:

- *Internet:* <https://www.regulations.gov>. Search for and submit comments on Docket No. FWS–HQ–IA–2021–0102.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2021–0102; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public  
Comment Procedures under  
**SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:**  
Brenda Tapia, by phone at 703–358–  
2185, via email at [DMAFR@fws.gov](mailto:DMAFR@fws.gov), or  
via the Federal Relay Service at 800–  
877–8339.

**SUPPLEMENTARY INFORMATION:**

**I. Public Comment Procedures**

*A. How do I comment on submitted  
applications?*

We invite the public and local, State,  
Tribal, and Federal agencies to comment  
on these applications. Before issuing  
any of the requested permits, we will  
take into consideration any information  
that we receive during the public  
comment period.

You may submit your comments and  
materials by one of the methods in  
**ADDRESSES.** We will not consider  
comments sent by email or fax, or to an  
address not in **ADDRESSES.** We will not  
consider or include in our  
administrative record comments we  
receive after the close of the comment  
period (see **DATES**).

When submitting comments, please  
specify the name of the applicant and  
the permit number at the beginning of  
your comment. Provide sufficient  
information to allow us to authenticate  
any scientific or commercial data you  
include. The comments and  
recommendations that will be most  
useful and likely to influence agency  
decisions are: (1) Those supported by  
quantitative information or studies; and  
(2) those that include citations to, and  
analyses of, the applicable laws and  
regulations.

*B. May I review comments submitted by  
others?*

You may view and comment on  
others' public comments at <https://www.regulations.gov>, unless our  
allowing so would violate the Privacy  
Act (5 U.S.C. 552a) or Freedom of  
Information Act (5 U.S.C. 552).

*C. Who will see my comments?*

If you submit a comment at <https://www.regulations.gov>, your entire  
comment, including any personal  
identifying information, will be posted  
on the website. If you submit a  
hardcopy comment that includes  
personal identifying information, such  
as your address, phone number, or  
email address, you may request at the  
top of your document that we withhold  
this information from public review.  
However, we cannot guarantee that we  
will be able to do so. Moreover, all  
submissions from organizations or  
businesses, and from individuals  
identifying themselves as  
representatives or officials of  
organizations or businesses, will be  
made available for public disclosure in  
their entirety.

**II. Background**

To help us carry out our conservation  
responsibilities for affected species, and

in consideration of section 104(c) of the  
Marine Mammal Protection Act of 1972,  
as amended (MMPA; 16 U.S.C. 1361 *et  
seq.*), and section 112(4) of the Wild  
Bird Conservation Act of 1992 (WBCA;  
16 U.S.C. 4901–4916), we invite public  
comments on permit applications before  
final action is taken. With some  
exceptions, these Acts prohibit certain  
activities with listed species unless  
Federal authorization is issued that  
allows such activities. Service  
regulations regarding permits for any  
activity otherwise prohibited by the  
MMPA with respect to any marine  
mammals are available in title 50 of the  
Code of Federal Regulations in part 18.  
Service regulations regarding permits  
for any activity otherwise prohibited by  
the WBCA with respect to any wild  
birds are available in title 50 of the Code  
of Federal Regulations in part 15.

Concurrent with publishing this  
notice in the **Federal Register**, we are  
forwarding copies of the marine  
mammal applications to the Marine  
Mammal Commission and the  
Committee of Scientific Advisors for  
their review.

**III. Permit Applications**

We invite comments on the following  
applications.

*A. Marine Mammal Protection Act*

Applicant: San Diego Zoo Wildlife  
Alliance, San Diego, CA; Permit No.  
63201D

The applicant requests a permit to  
obtain samples of West Indian manatees  
(*Trichechus manatus*) that have been  
salvaged from dead animals taken from  
the wild for the purpose of scientific  
research. This notification covers  
activities to be conducted by the  
applicant over a 5-year period.

*B. Wild Bird Conservation Act*

Applicant: Mary Ellen LePage, Santa  
Cruz, CA; Permit No. 13344C

The applicant wishes to amend the  
Cooperative Breeding Program CB035  
covering (*Cacatua ophthalmica*), by  
including Derian Silva of Miami,  
Florida, as a member to CB035. If the  
amendment is approved, the program  
will include Derian Silva, Miami,  
Florida, as a member of CB035.

Applicant: Vernon Brett Padgett,  
Atlanta, GA; Permit No. CS0080491

The applicant wishes to amend the  
Cooperative Breeding Program for  
underrepresented *Bucerotidae* and  
*Psittaciformes* in aviculture, no. CB042,  
by including Gulf Breeze Zoo, Gulf  
Breeze, Florida, as a member of CB042.  
If the amendment is approved, the



program will include Gulf Breeze Zoo, Gulf Breeze, Florida, as a member of CB042.

#### IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching <https://www.regulations.gov> for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to [regulations.gov](https://www.regulations.gov) and search for "12345A".

#### V. Authority

We issue this notice under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and its implementing regulations, and section 112(4) of the Wild Bird Conservation Act of 1992 and the regulations at 50 CFR 15.26(c).

#### Brenda Tapia,

*Supervisor Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2021-26704 Filed 12-9-21; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[223 LLUTG02000 L12200000.PM0000]

#### Notice of Public Meeting, San Rafael Swell Recreation Area Advisory Council, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) San Rafael Swell Recreation Area Advisory Council (Council) will meet as follows.

**DATES:** The Council is scheduled to meet virtually on February 16, 2022, from 1 p.m. to 5 p.m. and on February 17, 2022, from 8:30 a.m. to 12 p.m.

**ADDRESSES:** The meetings will be held online through the Zoom meeting application. Participation information will be available 30 days in advance of the meeting on the RAC's web page at

<https://www.blm.gov/get-involved/resource-advisory-council/near-you/utah/San-Rafael-Swell-RAC>. Written comments to address the Council may be sent to Lance Porter, Green River District Manager, 170 South 500 West, Vernal, Utah 84078; or via email with the subject line "San Rafael Swell Advisory Council meeting" to [utprmail@blm.gov](mailto:utprmail@blm.gov).

#### FOR FURTHER INFORMATION CONTACT:

Lance Porter, BLM Green River District Manager, 170 South 500 West, Vernal, Utah 84078; telephone (435) 781-4400; or email [l50porte@blm.gov](mailto:l50porte@blm.gov). Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1-800-877-8339 to leave a message or question for Lance Porter. The FRS is available 24 hours a day, 7 days a week. Replies are provided during normal business hours.

**SUPPLEMENTARY INFORMATION:** The John D. Dingell, Jr. Conservation, Management, and Recreation Act (Pub. L. 116-9) established the Council to provide advice and information for the BLM in planning and managing the San Rafael Swell Recreation Area. The seven-member council represents a wide range of interests including local government, recreational users, grazing allotment permittees, conservation organizations, expertise in historical uses of the recreation area, and Tribes. More information can be found on the Council's web page at: <https://www.blm.gov/get-involved/resource-advisory-council/near-you/utah/San-Rafael-Swell-RAC>. Agenda topics for the meeting will include San Rafael Swell Recreation Area updates; backcountry airstrips and Areas of Critical Environmental Concern within the San Rafael Swell Recreation Area; and the scoping themes and planning process for the Dingell Act RMP Amendments (as related to the San Rafael Swell Recreation Area only). The final agenda and meeting information will be posted on the Council's web page 30 days before the meeting.

The meeting is open to the public. A public-comment period will be offered each day of the scheduled meeting. Depending on the number of people wishing to comment and the time available, the time for individual comments may be limited. Written comments may also be sent to the Green River District Manager at the address listed in the **ADDRESSES** section of this notice. All comments received will be provided to the Council.

**Public Disclosure of Comments:** 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 we will be able to do so.

Detailed Council meeting minutes will be maintained in the Green River District Office and will be available for public inspection and reproduction during regular business hours within 90 days following the meeting. Minutes will also be posted to the Council web page.

(Authority: 43 CFR 1784.4-2)

#### Gregory Sheehan,

*Bureau of Land Management, State Director, Utah.*

[FR Doc. 2021-26766 Filed 12-9-21; 8:45 am]

**BILLING CODE 4310-DQ-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLORW00000.223L1109AF.L17110000.AL0000.241A.HAG22-0005]

#### Call for Nominations to the San Juan Islands National Monument Advisory Committee, Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of call for nominations.

**SUMMARY:** The purpose of this notice is to request public nominations to the Bureau of Land Management's (BLM) San Juan Islands National Monument Advisory Committee (MAC). This citizen-based committee advises the Secretary of the Interior with respect to the preparation and implementation of the San Juan Islands National Monument Management Plan.

**DATES:** All nominations must be received no later than January 10, 2022.

**ADDRESSES:** Nominations and completed applications should be sent to the BLM, Spokane District Office, 1103 N Fancher Road, Spokane, WA 99212.

**FOR FURTHER INFORMATION CONTACT:** Jeff Clark, Spokane District Public Affairs Officer, telephone: (509) 536-1297, or email: [jeffclark@blm.gov](mailto:jeffclark@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877-8339 to contact Mr. Clark during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The MAC was established pursuant to the Presidential Proclamation “Establishment of the San Juan Islands National Monument” (March 25, 2013) and is consistent with section 309 of the Federal Land Policy and Management Act, as amended (FLPMA) (43 U.S.C. 1739). FLPMA directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. The rules governing BLM advisory committees are found at 43 CFR subpart 1784.

The San Juan Islands MAC is comprised of 12 members representing a wide array of interests, including recreation, tribal, and education, as well as environmental organizations and landowners. The MAC is currently seeking nominations for the following positions that are or will become vacant:

- Two representatives of recreation and tourism interests;
- A representative of cultural and heritage interests; and
- A representative of education and interpretation interests.

Individuals may nominate themselves or others for appointment by the Secretary. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the MAC. Nominees must be residents of the State of Washington and should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

- A completed application, which can be obtained through the nominee’s local BLM office or online at: [https://www.blm.gov/sites/blm.gov/files/1120-019\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/1120-019_0.pdf). Nominees should note the interest area(s) they are applying to represent on their application.
- Letters of reference from represented interests or organizations; and
- Any other information that addresses the nominee’s qualifications.

Before including any address, phone number, email address, or other personal identifying information in the application, nominees should be aware this information may be made publicly available at any time. While the nominee can ask to withhold the personal identifying information from public review, the BLM cannot guarantee that it will be able to do so. (Authority: 43 CFR 1784.4–1)

**Kurt Pindel,**

*Spokane District Manager.*

[FR Doc. 2021–26770 Filed 12–9–21; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NAGPRA–33055;  
PPWOCRADN0–PCU00RP16.R50000]

#### Native American Graves Protection and Repatriation Review Committee Notice of Public Meetings

**AGENCY:** National Park Service, Interior.

**ACTION:** Meeting notice.

**SUMMARY:** The National Park Service is hereby giving notice that the Native American Graves Protection and Repatriation Review Committee (Review Committee) will hold six virtual meetings as indicated below.

**DATES:** The Review Committee will meet via teleconference on January 31, 2022; February 14, 2022; February 28, 2022; March 10, 2022; March 15, 2022; and March 21, 2022. All meetings will be held from 3:00 p.m. until approximately 6:00 p.m. (Eastern) and are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Melanie O’Brien, Designated Federal Officer, National Native American Graves Protection and Repatriation Act (NAGPRA) Program (2253), National Park Service, telephone (202) 354–2201, or email [nagpra\\_info@nps.gov](mailto:nagpra_info@nps.gov).

**SUPPLEMENTARY INFORMATION:** The Committee was established in section 8 of the Native American Graves Protection and Repatriation Act of 1990. Information about NAGPRA, the Committee, and Committee meetings is available on the National NAGPRA Program website at <https://www.nps.gov/orgs/1335/events.htm>.

The Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian Tribes and Native Hawaiian organizations and museums on matters affecting such Tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Committee’s work is carried out during

the course of meetings that are open to the public.

The agenda for each meeting may include a report from the National NAGPRA Program; the discussion of the Review Committee Report to Congress; subcommittee reports and discussion; and other topics related to the Committee’s responsibilities under section 8 of NAGPRA. In addition, the agenda may include requests to the Committee for a recommendation to the Secretary of the Interior that an agreed-upon disposition of Native American human remains proceed.

During each meeting, there will be time scheduled for public comments. Written comments may be submitted, see **FOR FURTHER INFORMATION CONTACT**. All comments received will be provided to the Committee. Information on joining the virtual conference by internet or phone will be available on the National NAGPRA Program website at <https://www.nps.gov/orgs/1335/events.htm>.

#### *Public Disclosure of Comments:*

Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Authority:* 5 U.S.C. Appendix 2; 25 U.S.C. 3006.

**Alma Ripps,**

*Chief, Office of Policy.*

[FR Doc. 2021–26720 Filed 12–9–21; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NAGPRA–NPS0033083;  
PPWOCRADN0–PCU00RP14.R50000]

#### Notice of Intent To Repatriate Cultural Items: The Field Museum of Natural History, Chicago, IL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Field Museum of Natural History (Field Museum), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an unassociated funerary object. Lineal descendants or representatives of any

Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Field Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Field Museum at the address in this notice by January 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Helen Robbins, Director of Repatriation, The Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665-7317, email [hrobbins@fieldmuseum.org](mailto:hrobbins@fieldmuseum.org).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of The Field Museum of Natural History, Chicago, IL, that meets the definition of an unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

### History and Description of the Cultural Item

Sometime between 1893 and 1899, one cultural item was removed from the site of Payupki in Navajo County, AZ. It is unknown who excavated the item, but it ended up in the collection of Heinrich Voth and was bought by the Field Museum as part of a large accession of materials. Voth's field notes indicate that the item, a ceramic vase, was removed from a grave located one mile south of the site of Payupki, on the Hopi Reservation.

Voth's description of the provenience reasonably shows that the vase was removed from a grave. The item is affiliated with the Hopi Tribe of Arizona based on academic literature, oral traditional information, and consultation with the Hopi Tribe of Arizona. (According to the notes of

Charles Owen, a contemporary of Voth and an archeologist employed by the Field Museum, the site of Payupki was founded in 1680 by people from the "Rio Grande district." Based on academic literature and oral traditional information, these people were the ancestors of the Pueblo of Sandia, New Mexico. Although they lived at Payupki for a few generations, they subsequently returned to their place of origin.)

### Determinations Made by The Field Museum of Natural History

Officials of The Field Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Hopi Tribe of Arizona.

### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Helen Robbins, Director of Repatriation, The Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665-7317, email [hrobbins@fieldmuseum.org](mailto:hrobbins@fieldmuseum.org), by January 10, 2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary object to the Hopi Tribe of Arizona may proceed.

The Field Museum of Natural History is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: December 3, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021-26783 Filed 12-9-21; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-NPS0033084; PPWOCRADN0-PCU00RP14.R50000]

### Notice of Intent To Repatriate Cultural Items: The Field Museum of Natural History, Chicago, IL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Field Museum of Natural History (Field Museum), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Field Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Field Museum at the address in this notice by January 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Helen Robbins, Repatriation Director, The Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665-7317, email [hrobbins@fieldmuseum.org](mailto:hrobbins@fieldmuseum.org).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of The Field Museum of Natural History, Chicago, IL, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

### History and Description of the Cultural Items

Sometime between 1893 and 1899, 25 cultural items were removed from graves at the sites of Old Shongopovi, Old Oraibi, Awatovi, Mishongnovi, and Chukubi in Navajo County, AZ. Heinrich Voth either removed these items himself or acquired them from third parties. In 1899, Voth sold this collection to the Field Museum.

The 21 items that were removed from graves at Old Shongopovi are 11 ceramic bowls, eight ceramic jars, and two ceramic ladles. The one item that was removed from a grave 4 miles southeast of Old Oraibi is a ceramic jar. The one item that was removed from a grave at Awatovi is a ceramic bowl. The one item that was removed from a grave at Mishongnovi is a ceramic bowl. The one item that was removed from a grave near the ruins of Chukubi is a ceramic bowl.

Voth's notes concerning the provenience of the cultural items reasonably show they were removed from graves. All the sites from which the cultural items were removed are located on the Hopi Reservation. The cultural items themselves are affiliated with the Hopi Tribe of Arizona based on academic literature, oral traditional information, and consultation with the Hopi Tribe of Arizona.

### Determinations Made by The Field Museum of Natural History

Officials of The Field Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 25 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Hopi Tribe of Arizona.

### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Helen Robbins, Director of Repatriation, The Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665-7317, email [hrobbins@fieldmuseum.org](mailto:hrobbins@fieldmuseum.org), by January 10, 2022.

After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Hopi Tribe of Arizona may proceed.

The Field Museum of Natural History is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: December 3, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021-26784 Filed 12-9-21; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS-WASO-NAGPRA-NPS0033082; PPWOCRADNO-PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: American Museum of Natural History, New York, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The American Museum of Natural History in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an unassociated funerary object. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the American Museum of Natural History. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the American Museum of Natural History at the address in this notice by January 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769-5837, email [nmurphy@amnh.org](mailto:nmurphy@amnh.org).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a

cultural item under the control of the American Museum of Natural History, New York, NY, that meets the definition of an unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

### History and Description of the Cultural Item

In 1902, one cultural item was removed from Mahong Swamp, located in Shinnecock Hills, Suffolk County, NY, by William Payne. The item was gifted to the Museum in 1903 by Samuel Parrish and accessioned into the collection that same year. According to Museum records, a metal spoon was found lying by the skull of an "apparently Indian" skeleton, which crumbled upon exposure to the air. The unassociated funerary item is a "seal top" spoon. Examples of this type of spoon range from A.D. 1494 to 1699. Shinnecock Hills lies within the contact period territory of the Shinnecock Indians.

### Determinations Made by the American Museum of Natural History

Officials of the American Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Shinnecock Indian Nation.

### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769-5837, email [nmurphy@amnh.org](mailto:nmurphy@amnh.org), by January 10,

2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary object to the Shinnecock Indian Nation may proceed.

The American Museum of Natural History is responsible for notifying the Shinnecock Indian Nation that this notice has been published.

Dated: December 3, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021-26782 Filed 12-9-21; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-D-COS-POL-32541;  
PPWODIREPO; PPMPSAS1Y.YP0000]

#### Request for Nominations for the National Park System Advisory Board

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is seeking nominations for individuals to be considered for appointment to the National Park System Advisory Board (Board). The Board advises the Secretary of the Interior (Secretary) and the Director of the National Park Service (Director) on matters relating to the National Park Service (NPS), the National Park System, and programs administered by the NPS; the designation of National Historic Landmarks and National Natural Landmarks; and the national historic significance of proposed National Historic Trails. The Board is regulated by the Federal Advisory Committee Act (FACA).

**DATES:** Nominations must be postmarked by January 24, 2022.

**ADDRESSES:** Nominations should be emailed to Joshua Winchell, Staff Director, National Park System Advisory Board, National Park Service, at [joshua\\_winchell@nps.gov](mailto:joshua_winchell@nps.gov).

**FOR FURTHER INFORMATION CONTACT:** Joshua Winchell, telephone number (202) 641-4467, or email [joshua\\_winchell@nps.gov](mailto:joshua_winchell@nps.gov).

**SUPPLEMENTARY INFORMATION:** The Board shall be comprised of no more than 12 persons, appointed from among citizens of the United States having a demonstrated commitment to the mission of the NPS. Board members shall be selected to represent various geographic regions across the United States of America.

We are requesting nominations to fill vacancies for Board members in the categories listed below:

(1) Persons who have outstanding expertise in the physical and/or social sciences, such as history or geography; archeology or anthropology; historical or landscape architecture; or biology, ecology, geology, or marine sciences;

(2) persons having outstanding experience in the management of national or state parks; forests, wildlife refuges, or other protected natural areas; historic areas or sites; or have an extensive background in natural or cultural resources management.

(3) persons having outstanding expertise in professional or scientific disciplines that are important to the mission of the National Park Service, such as financial management or business development; historical or recreational land use management or planning; or business management, marketing or entrepreneurship.

Among all categories at least one appointment will be a person who serves as a locally elected official from an area adjacent to a national park unit, and at least one person will be a military veteran or has a physical impairment. The Secretary will also seek to appoint at least one member of a Tribe.

Nominations must include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Board and permit the Department to contact a potential member.

Members of the Board are appointed as special Government employees (SGEs) and are therefore subject to applicable Federal ethics statutes and regulations, to include applicable exceptions and exemptions. Additionally, SGE members are required, prior to appointment and annually thereafter, to file a Confidential Financial Disclosure Report. SGE members are also required to receive initial ethics training prior to performing any Board duties and to receive annual ethics training thereafter. The Department of the Interior will provide materials to those members serving as special Government employees, explaining their ethical obligations. You may find a copy of the Confidential Financial Disclosure Report at the following website: <https://www.doi.gov/ethics/special-government-employees/financial-disclosure>. Please contact (202) 208-7960 or [DOI\\_Ethics@sol.doi.gov](mailto:DOI_Ethics@sol.doi.gov) with any questions about the ethics

requirements for members appointed as SGEs.

Members serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Board as approved by the Designated Federal Officer, members may be allowed travel expenses, including per diem in lieu of subsistence.

*Authority:* 5 U.S.C. Appendix 2

**Alma Rippis,**

*Chief, Office of Policy.*

[FR Doc. 2021-26809 Filed 12-9-21; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-NAGPRA-NPS0033085;  
PPWOCRADNO-PCU00RP14.R50000]

#### Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, Bureau of Land Management, Alaska State Office (BLM) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the BLM. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with supporting information to the BLM at the address in this notice by January 10, 2022.

**FOR FURTHER INFORMATION CONTACT:**

Robert E. King, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271-5510, email [r2king@blm.gov](mailto:r2king@blm.gov).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK. The human remains and associated funerary objects were removed from the Rolling Bay site (KOD-101) on Sitkalidak Island, located near Kodiak Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the BLM with the help of the University of Alaska Museum of the North professional staff in consultation with representatives of the Alutiiq Tribe of Old Harbor [previously listed as Native Village of Old Harbor and Village of Old Harbor].

**History and Description of the Remains**

Sometime between the late 1940s and the late 1970s, human remains representing, at minimum, three individuals were removed from the Rolling Bay site on Sitkalidak Island, which is located near Kodiak Island, AK, by William Laughlin. During these years, Laughlin was associated with several universities. The remains of these individuals were found at the Museum of Anthropological Archaeology at the University of Michigan, Ann Arbor, MI, where, at an unknown date, they had been sent as part of a study on Eastern Aleutian archeology undertaken in collaboration with faculty member Ted P. Bank, II. In 2014, these human remains were transferred to the Bureau of Land Management in Anchorage, AK, and in late 2018, the BLM transferred them to the University Museum of the North, Fairbanks, AK, where they are currently housed. The human remains, comprised of eight teeth, belong to three adults of unknown sex. No known individuals

were identified. No associated funerary objects are present.

At minimum, the burials containing the three individuals were over 200 years old (their actual age unknown). The human remains are determined to be Native American based on their provenience (Sitkalidak Island, AK), physical condition, and morphology. Archeological and oral traditional information suggest many thousands of years of shared ancestry between current and past populations of the area and Alutiiq peoples' use of Sitkalidak Island, near Kodiak Island. Therefore, the human remains are determined to be directly related to Kodiak Island Alutiiq people represented by the Alutiiq Tribe of Old Harbor.

**Determinations Made by the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office**

Federal Agency Officials of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Alutiiq Tribe of Old Harbor [previously listed as Native Village of Old Harbor and Village of Old Harbor].

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Robert E. King, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271-5510, email [r2king@blm.gov](mailto:r2king@blm.gov), by January 10, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Alutiiq Tribe of Old Harbor [previously listed as Native Village of Old Harbor and Village of Old Harbor] may proceed.

The U.S. Department of the Interior, Bureau of Land Management, Alaska State Office is responsible for notifying the Alutiiq Tribe of Old Harbor [previously listed as Native Village of Old Harbor and Village of Old Harbor] that this notice has been published.

Dated: December 3, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021-26768 Filed 12-9-21; 8:45 am]

**BILLING CODE 4312-52-P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS-WASO-NAGPRA-NPS0033080; PPWOCRADNO-PCU00RP14.R50000]

**Notice of Inventory Completion: Arizona Museum of Natural History, Mesa, AZ**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Arizona Museum of Natural History has completed an inventory of human remains and an associated funerary object, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary object and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request to the Arizona Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary object to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to the Arizona Museum of Natural History at the address in this notice by January 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Melanie Deer, Arizona Museum of Natural History, 53 N MacDonald, Mesa, AZ 85201, telephone (480) 644-4381, email [melanie.deer@mesaaz.gov](mailto:melanie.deer@mesaaz.gov).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary object under the control of the

Arizona Museum of Natural History, Mesa, AZ. The human remains and associated funerary object are most likely from Maricopa County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the Arizona Museum of Natural History professional staff in consultation with representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona and the Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.

#### History and Description of the Remains

On December 26, 1985, human remains representing, at minimum, one individual were removed from an unknown location most likely in the area of Phoenix, Maricopa County, AZ. The human remains and a redware vessel were donated to the Arizona Museum of Natural History by Ray Thomas. The human remains belong to an individual of unidentified age and sex. No known individual was identified. The one associated funerary object is a redware vessel.

The style of the redware vessel indicates that it belongs to the Hohokam Material Culture. According to archeological understanding, the region from which these human remains were most likely collected was occupied by the Hohokam Material Culture in prehistoric times. In addition, according to archeological and ethnographic understandings, the Hohokam Material Culture group is ancestral to the Four Southern Tribes of Arizona (*i.e.*, the Tohono O'odham Nation of Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River-Pima Maricopa Indian Community of the Salt River Reservation, Arizona; and the Ak-Chin Indian Community [previously listed as Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona], as well as the Hopi Tribe of Arizona. The Four Southern Tribes of Arizona divide their ancestral lands so that each tribe oversees those portions of land situated closest to their reservations.

#### Determinations Made by the Arizona Museum of Natural History

Officials of the Arizona Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ak-Chin Indian Community [previously listed as Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona]; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River-Pima Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona (hereafter referred to as "The Tribes").

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Melanie Deer, Arizona Museum of Natural History, 53 N Macdonald, Mesa, AZ 85201, telephone (480) 644-4381, email [melanie.deer@mesaaz.gov](mailto:melanie.deer@mesaaz.gov), by January 10, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The Arizona Museum of Natural History is responsible for notifying The Tribes that this notice has been published.

Dated: December 1, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021-26780 Filed 12-9-21; 8:45 am]

**BILLING CODE 4312-52-P**

#### DEPARTMENT OF THE INTERIOR

##### National Park Service

[NPS-WASO-NAGPRA-NPS0033081; PPWOCRADNO-PCU00RP14.R50000]

#### Notice of Inventory Completion: Sam Noble Oklahoma Museum of Natural History, Norman, Oklahoma, Norman, OK

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

**SUMMARY:** The Sam Noble Oklahoma Museum of Natural History (Museum) at the University of Oklahoma has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Museum at the address in this notice by January 10, 2022.

**ADDRESSES:** Dr. Marc Levine, Associate Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072-7029, telephone (405) 325-1994, email [mlevine@ou.edu](mailto:mlevine@ou.edu).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK. The human remains and associated funerary objects were removed from Wilcox County, AL, and Pittsburg County, OK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains was made by the Sam Noble Oklahoma Museum of Natural History professional staff in consultation with representatives of The Choctaw Nation of Oklahoma and The Muscogee (Creek) Nation (hereafter referred to as "The Tribes").

### History and Description of the Remains

Sometime prior to 1970, human remains representing, at minimum, one individual were removed from an unknown site (1Wx00) in Wilcox County, AL. The human remains were obtained by a University of Oklahoma student prior to 1970, and subsequently were brought to the Museum. The fragmentary human remains belong to a female 35–50 years old. No known individual was identified. No associated funerary objects were present.

The human remains were interred during the pre-contact era. Based on geographical, historical, and linguistic evidence, as well oral history and other information gained through tribal consultation, this individual was most likely associated with one of the Muskogean language speaking groups and, consequently, is culturally affiliated with The Tribes.

In 1951, human remains representing, at minimum, four individuals were removed from a field at the Moody site (34Ps28) in Pittsburg County, OK. The human remains and associated funerary objects were recovered by archeologists from the University of Oklahoma. Subsequently, they were turned over to the Museum. The human remains include the complete skeletons of a young adult male 20–35 years old; a young adult female 20–35 years old; the partial skeleton of a young adult male 20–35 years old; and the fragmentary remains of an infant 1–3 years old. No known individuals were identified. The 408 associated funerary objects include 70 ceramic sherds, 12 porcelain sherds, one porcelain saucer fragment, one tea cup fragment with floral designs, 73 animal teeth and bone fragments, seven glass fragments, one ceramic pipe bowl fragment, 195 stone flakes, six projectile points, two projectile point fragments,

one stone scraper, one gunflint, one stone cobble, four unidentified metal fragments, one tin cup, one brass ornament harness fragment, one brass spoon fragment, one steel fragment, one iron forged tomahawk head, two iron knives with bone handles, two iron bullet molds, one iron forged chain link, two unidentified iron fragments, one iron wrench, two bags of charred wood mixed with daub fragments or matrix, two charcoal fragments, and 16 fragments of daub.

The Moody site has been dated to the period A.D. 1850–1900. Based on archeological, geographical, linguistic, and historical evidence, as well oral history and information gained through tribal consultation, this site was most likely occupied by one of the Muskogean language speaking groups. Consequently, these individuals are culturally affiliated with The Tribes.

### Determinations Made by the Sam Noble Oklahoma Museum of Natural History

Officials of the Sam Noble Oklahoma Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 408 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Marc Levine, Associate Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072–7029, telephone (405) 325–1994, email [mlevine@ou.edu](mailto:mlevine@ou.edu), by January 10, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed. The Sam Noble Oklahoma Museum of Natural History is

responsible for notifying The Tribes that this notice has been published.

Dated: December 3, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021–26781 Filed 12–9–21; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0033091; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The University of Colorado Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Colorado Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Colorado Museum at the address in this notice by January 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Dr. Samantha G. Fladd, University of Colorado Museum, 1030 Broadway, Boulder, CO 80309, telephone (303) 492–6671, email [samantha.fladd@colorado.edu](mailto:samantha.fladd@colorado.edu).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C.



3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Colorado Museum, Boulder, CO. The human remains and associated funerary objects were removed from Montezuma County and La Plata County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains was made by the University of Colorado Museum professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico [previously listed as Pueblo of San Juan]; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Tesuque, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe [previously listed as Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah]; and the Ysleta del Sur Pueblo [previously listed as Ysleta Del Sur Pueblo of Texas]. The Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Zia, New Mexico; Santo Domingo Pueblo [previously listed as Kewa Pueblo, New Mexico, and Pueblo of Santo Domingo]; and the Zuni Tribe of the Zuni Reservation, New Mexico were invited to consult but did not participate. Hereafter all Indian Tribes listed in this section are referred to as "The Consulted and Invited Tribes".

### History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown site in La Plata County, CO. In May 1961, they were purchased by the University of Colorado Museum from Gervis W. Hoofnagle and cataloged into the museum collection (catalog number

22264). Based on museum records, the human remains were collected near Durango, CO. Based on Mr. Hoofnagle's notebook entries and osteological analysis at the Metropolitan State University Human Identification Lab, the human remains are Native American. Based on Mr. Hoofnagle's notebook entries, the human remains are reasonably believed to be Puebloan. The human remains represent one adult, probably male. No known individual was identified. No associated funerary objects are present.

Sometime between 1915 and 1935, human remains representing, at minimum, one individual were removed from a site one-half mile south of Durango, CO, in La Plata County, CO, by Earl H. Morris of the University of Colorado Museum. They were cataloged into the museum collection (catalog number 08546). Based on the acquisition date, museum records, and osteological analysis at the Metropolitan State University Human Identification Lab, the human remains are reasonably believed to be Native American. Based on provenience, site architecture, and ceramics recorded at the site dating to the Basketmaker III or Pueblo I time period, approximately A.D. 550–900, the human remains are reasonably believed to be Puebloan. The human remains represent one adult, probably female. No known individual was identified. The one associated funerary object is one bag of beads, cordage, soil, and nonhuman skeletal elements.

Between 1954 and 1966, human remains representing, at minimum, three individuals (catalog numbers 09130, 09894, 17445) were removed from two sites near Yellow Jacket Pueblo (5MT1 and 5MT3), Montezuma County, CO, during legally conducted excavations by Dr. Joe Ben Wheat with students participating in archeological field schools sponsored by the University of Colorado Museum. The human remains and associated funerary objects were physically transferred to the museum at the end of each field season. Based on osteological analysis at the Metropolitan State University Human Identification Lab and museum documentation, the human remains originating from Yellow Jacket sites represent three adults (one female and two of indeterminate sex), and are reasonably believed to be Native American. No known individuals were identified. The six associated funerary objects are one lot of pottery sherds (catalog number 09034), one Olivella shell necklace (catalog number 09036), one lot of groundstone (catalog number 11454), and three lots of faunal remains

(catalog numbers 17444, 17445 and 17446.1).

The habitation sites (identified on the National Register of Historic Places as the Joe Ben Wheat Site Complex), are situated at the head of Yellow Jacket Canyon to the west of Tatum Draw and southwest of the very large archeological site, Yellow Jacket Pueblo (5MT5). The Yellow Jacket burials were predominantly single interments, appearing in a wide variety of locations, including unoccupied rooms and kivas, storage pits, subfloor burial pits, extramural burial pits, and middens.

The site complex was occupied at various times during the Basketmaker III, Pueblo II, and Pueblo III periods, approximately A.D. 550–1250, with a hiatus in occupation during the Pueblo I period, A.D. 750–900. Based on the general continuity in the material culture and architecture of these sites, it appears that the community that lived in this area had long-standing ties to the region and returned to the sites even after migrations away from the locale that lasted more than one hundred years. However, by the late 13th century, both the Yellow Jacket sites and the nearby Mesa Verde region showed no evidence of human habitation. The sites were not used again until the late 1920s when the locale was homesteaded and farmed.

All individuals listed in this Notice of Inventory Completion are reasonably believed to be Puebloan based on the provenience, acquisition, museum collecting history, excavator history, and associated documentation. Based on a preponderance of evidence, a shared group identity can be traced between Puebloan peoples and modern Puebloan groups, based on oral tradition, historical evidence, folkloric, archeological, geographical, linguistic, kinship, and scientific studies. On file at the University of Colorado Museum is oral-tradition evidence, which consists of migration stories, clan histories, and origin stories provided by the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico [previously listed as Pueblo of San Juan]; Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo [previously listed as Ysleta Del Sur Pueblo of Texas]; and the Zuni Tribe of the Zuni Reservation, New Mexico. The Museum also has on file

linguistic evidence rooted in place names that has been provided by the Pueblo of Acoma, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of San Ildefonso, New Mexico; and the Pueblo of Taos, New Mexico. The Museum also has on file archeological evidence based on architecture and material culture provided by the Pueblo of Cochiti, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of San Ildefonso, New Mexico; and the Pueblo of Santa Clara, New Mexico.

According to scientific studies and oral tradition evidence including migration stories, clan histories, and origin stories, the Navajo share some cultural practices with modern Pueblo peoples. The Navajo emphasize their long presence in the Four Corners and their origin in this area, but there is not a preponderance of evidence to support Navajo cultural affiliation to the human remains described in this notice.

#### Determinations Made by the University of Colorado Museum

Officials of the University of Colorado Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the seven objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico [previously listed as Pueblo of San Juan]; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Santo Domingo Pueblo [previously listed as Kewa Pueblo, New Mexico, and Pueblo of Santo Domingo]; Ysleta del Sur Pueblo [previously listed as Ysleta Del Sur Pueblo of Texas]; and the Zuni Tribe of the Zuni Reservation, New

Mexico (hereafter referred to as “The Tribes”).

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Samantha G. Fladd, University of Colorado Museum, 1030 Broadway, Boulder, CO 80309, telephone (303) 492-6671, email [samantha.fladd@colorado.edu](mailto:samantha.fladd@colorado.edu), by January 10, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The University of Colorado Museum is responsible for notifying The Consulted and Invited Tribes and The Tribes that this notice has been published.

Dated: December 3, 2021.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2021-26769 Filed 12-9-21; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

[RR06781000, 21XR0680A4, RX.02964999.0060000]

#### Notice To Establish a New Federal Lands Recreation Enhancement Act Site at Canyon Ferry Reservoir, Helena, Montana

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of proposed new site; request for comments.

**SUMMARY:** The Bureau of Reclamation is proposing to designate Canyon Ferry Reservoir as a new site under the Federal Lands Recreation Enhancement Act which will authorize retention of recreation user fees for overnight camping, group use shelters, and special use permits.

**DATES:** Submit written comments on the new site on or before June 8, 2022. The proposed fee retention at Canyon Ferry Reservoir is scheduled to begin on this date if no substantive comments are received.

**ADDRESSES:** Send written comments on the proposed new site to Ryan Newman, Area Manager, Montana Area Office, Bureau of Reclamation, 2900 4th Ave. North, Suite 501, Billings, Montana

59101. Public outreach will be performed via website postings at [www.usbr.gov/gp/mtao/canyonferry/](http://www.usbr.gov/gp/mtao/canyonferry/) and [www.usbr.gov/gp/mtao/index.html](http://www.usbr.gov/gp/mtao/index.html), as well as advertisements in the local area newspapers.

#### FOR FURTHER INFORMATION CONTACT:

Charles Hueth, Canyon Ferry Field Office Assistant Facility Manager, 7700 Canyon Ferry Road, Helena, MT 59602; email at [chueth@usbr.gov](mailto:chueth@usbr.gov), or call (406) 475-3922. Information about the proposed new site and fee retention can also be found on the Bureau of Reclamation, Montana Area Office website at [www.usbr.gov/gp/mtao/index.htm](http://www.usbr.gov/gp/mtao/index.htm), and Canyon Ferry Field Office website at [www.usbr.gov/gp/mtao/canyonferry/](http://www.usbr.gov/gp/mtao/canyonferry/).

**SUPPLEMENTARY INFORMATION:** The Federal Lands Recreation Enhancement Act (REA) (16 U.S.C. 6801-6814) directed the Secretary of the Interior to publish a 6-month advance notice in the **Federal Register** whenever a new REA site is established. The Bureau of Reclamation, Montana Area Office, under the authority of REA, proposes to establish retention of camping, group use shelter, and special use permit recreation user fees at the Canyon Ferry Reservoir. Currently user fees are returned to the U.S. Department of Treasury. Retained fees will be used for the continued operation, maintenance, and improvements of the reservoir area recreation amenities and related public use programs.

#### Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Ryan Newman,**

*Area Manager, Montana Area Office.*

[FR Doc. 2021-26763 Filed 12-9-21; 8:45 am]

**BILLING CODE 4332-90-P**

**INTERNATIONAL TRADE  
COMMISSION**

[Investigation No. 337–TA–1100]

**Notice of Commission Determination  
Not To Review an Initial Determination  
Granting a Motion for Return of a  
Bond; Certain Microfluidic Systems  
and Components Thereof and  
Products Containing Same****AGENCY:** U.S. International Trade  
Commission.**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 46) of the presiding administrative law judge (“ALJ”), granting respondent Bio-Rad Laboratories, Inc.’s motion for return of the bond it posted during the period of Presidential Review.

**FOR FURTHER INFORMATION CONTACT:** Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On February 21, 2018, the Commission instituted this investigation based on a complaint filed by 10X Genomics, Inc. of Pleasanton, CA (“10X”). 83 FR 7491 (Feb. 21, 2018). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microfluidic systems and components thereof and products containing same by reason of infringement of one or more claims of U.S. Patent Nos. 9,644,204; 9,689,024; 9,695,468; and 9,856,530. *Id.* The Commission’s notice of investigation named as the sole respondent Bio-Rad Laboratories, Inc. of Hercules, CA (“Bio-Rad”). *Id.* The Office of Unfair Import Investigations participated in this investigation. *Id.*

On February 12, 2020, the Commission issued its opinion and final determination in this investigation, which found Bio-Rad in violation of section 337. The Commission also issued remedial orders on that date and set a bond of twenty-five percent (25%) of the entered value of the articles subject to the remedial orders during the period of Presidential review. Pursuant to that bond provision, Bio-Rad posted bond in the amount of \$6,554.68.

On July 26, 2021, Bio-Rad agreed to a settlement resolving the dispute in this investigation. Pursuant to a joint request by Bio-Rad and 10X, the Commission reviewed the settlement agreement and issued an order rescinding the remedial orders in this investigation on August 25, 2021. *See* 86 FR 48441–42 (Aug. 30, 2021).

On July 28, 2021, shortly after entering the settlement agreement with 10X, Bio-Rad moved without opposition for the return of its bond. On October 21, 2021, the presiding ALJ issued the subject ID, which granted Bio-Rad’s motion. No petitions for review of that ID have been received.

The Commission has determined not to review the subject ID. The bond at issue is ordered to be returned to Bio-Rad.

The Commission vote for this determination took place on December 6, 2021.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 6, 2021.

**Lisa Barton,***Secretary to the Commission.*

[FR Doc. 2021–26717 Filed 12–9–21; 8:45 am]

**BILLING CODE 7020–02–P****INTERNATIONAL TRADE  
COMMISSION**

[Investigation No. 337–TA–1209]

**Certain Movable Barrier Operator  
Systems and Components Thereof;  
Commission Decision To Review in  
Part a Final Initial Determination  
Finding a Violation of Section 337;  
Schedule for Filing Written  
Submissions on the Issues Under  
Review and on Remedy, the Public  
Interest, and Bonding; Target Date  
Extension****AGENCY:** U.S. International Trade  
Commission.**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (“FID”) of the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930, as amended. The Commission requests briefing from the parties on certain issues under review, as set forth in this notice. The Commission also requests briefing from the parties, interested persons, and government agencies on the issues of remedy, the public interest, and bonding. The Commission has further determined to extend the target date until February 3, 2022.

**FOR FURTHER INFORMATION CONTACT:**

Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On August 10, 2020, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Overhead Door Corporation of Lewisville, Texas and GMI Holdings Inc. of Mount Hope, Ohio (collectively, “Complainants”). *See* 85 FR 48264–65 (Aug. 10, 2020). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain movable barrier operator systems and components thereof by reason of infringement of U.S. Patent Nos. 8,970,345 (“the ‘345 patent’”); 9,483,935 (“the ‘935 patent’”); 7,173,516 (“the ‘516 patent’”); 7,180,260 (“the ‘260 patent’”); 7,956,718 (“the ‘718 patent’”); and 8,410,895 (“the ‘895 patent’”). *See id.* The notice of investigation names The Chamberlain Group, Inc. of Oak Brook, Illinois (“Respondent”) as the respondent in this investigation. *See id.* The Office of Unfair Import

Investigations is not a party to the investigation. *See id.*

On February 10, 2021, the Commission terminated the investigation as to the '516 patent based on the withdrawal of the allegations in the complaint as to that patent. *See* Order No. 10 (Jan. 19, 2021), *unreviewed* by Comm'n Notice (Feb. 10, 2021).

On April 26, 2021, the ALJ issued an ID granting Complainants' motion for summary determination that the economic prong of the domestic industry requirement is satisfied. *See* Order No. 12 (April 26, 2021), *unreviewed* by Comm'n Notice (May 26, 2021).

On September 14, 2021, the ALJ issued the FID finding a violation of section 337 based on the infringement by Respondent of all of Complainants' asserted patents. Specifically, the FID finds that: (1) The asserted patents are all infringed by Respondent's accused products and redesigned products; (2) the domestic industry products practice the asserted patents; and (3) the asserted patents not invalid under 35 U.S.C. 101, 102, or 103.

The FID also includes a recommended determination ("RD") recommending, should the Commission affirm and find a violation of section 337, that the Commission issue: (1) A limited exclusion order against certain movable barrier operator systems and components thereof that are imported into the United States, sold for importation, and sold within the United States after importation, by the Respondent; and (2) a cease and desist order against the Respondent. The RD also recommends that the Commission set a bond during the period of Presidential review in an amount of 100 percent of the entered value of the movable barrier operator systems imported by or on behalf of the Respondent.

On September 27, 2021, the Respondent filed a petition for Commission review of certain aspects of the FID. Specifically, Respondent requested that the Commission review, for one or more of the asserted patents, the FID's findings with respect to: (1) Claim construction; (2) infringement; (3) invalidity for anticipation or obviousness under 35 U.S.C. 102 or 103, respectively; (4) invalidity for patent ineligibility under 35 U.S.C. 101; and/or (5) the technical prong of the domestic industry requirement. On October 5, 2021, Complainants filed a response in opposition to the Respondent's petition.

Having examined the record of this investigation, including the FID and the parties' submissions, the Commission has determined to review the FID in

part. Specifically, the Commission has determined to review the following of the FID's findings: (1) With respect to the '345 and '935 patents, construction of the claim term "on each of the channels . . .," the related infringement findings as to the accused products and redesigns, and the validity of the asserted claims of the '345 and '935 patents over U.S. Patent Application Publication No. 2006/0109078 (RX-44) ("Keller"); (2) with respect to the '260 patent, construction of the claim term "user input of . . . limit values," the related infringement findings, and patent eligibility under 35 U.S.C. 101; and (3) with respect to the '718 and '895 patents, construction of the claim terms "obstruction detection unit" and "obstruction detector," the related infringement findings as to the accused products and redesigns, and patent eligibility under 35 U.S.C. 101. The Commission has determined not to review the remainder of the FID.

The Commission has also determined to extend the target date until February 3, 2022.

In connection with its review, the Commission requests the parties to brief their positions with reference to the applicable law and the evidentiary record regarding only the following issues:

1. Explain why the claim phrase "on each of the channels, . . . multiple copies of a message" in the '935 patent and the claim phrase "on each of the channels, . . . to a next one of the multiple channels" in the '345 patent require construction and why the plain language of the claim phrases is inadequate to resolve the parties' disputes as to infringement and/or invalidity over Keller.

2. Assuming that the Commission determines that the claim phrase "on each of the channels, . . . multiple copies of a message" in the '935 patent and the claim phrase "on each of the channels, . . . to a next one of the multiple channels" in the '345 patent require no construction and that the plain meaning applies, please provide your position, with support from the evidentiary record, as to the effect of this construction on infringement and/or invalidity over Keller.

3. Assuming that the Commission determines that the claim phrase "on each of the channels, . . . multiple copies of a message" in the '935 patent should be construed to mean "a transmitter configured to automatically transmit multiple copies of a message upon actuation of the transmitter on each of two or more different channels," please provide your position, with support from the evidentiary record, as to the effect of this construction on infringement and/or invalidity over Keller.

4. Assuming that the Commission determines that the claim phrase "on each of the channels, . . . to a next one of the multiple channels" in the '345 patent should be construed to mean "a transmitter

operatively connected to automatically transmit multiple copies of a message upon actuation of the transmitter on one of multiple channels prior to switching the transmitter at a transmitter-switching rate, to a next one of the multiple channels," please provide your position, with support from the evidentiary record, as to the effect of this construction on infringement and/or invalidity over Keller.

5. Explain why the claim phrase "user input of . . . limit values" in the '260 patent requires construction and why the plain language of the claim phrase is inadequate to resolve the parties' disputes as to infringement.

6. Assuming that the Commission determines that the claim phrase "user input of . . . limit values" in the '260 patent requires no construction and that the plain meaning applies, please provide your position, with support from the evidentiary record, as to the effect of this construction on infringement.

7. Assuming that the Commission determines that the construction of the claim terms "obstruction detection unit" and "obstruction detector" do not require "enabling a response to an obstruction," and should be construed as "device or circuitry capable of detecting and signaling an obstruction in the opening closable by the barrier," please provide your position, with support from the evidentiary record, as to the effect of this construction on infringement.

In addition, in connection with the final disposition of this investigation, the statute authorizes issuance of (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or

directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. In that regard, the Commission requests briefing on each of the aforementioned public interest factors. The parties are requested to also brief their positions on the following questions:

1. Please include in your analysis of the competitive conditions in the United States economy and U.S. consumers, a fulsome explanation, supported by evidence as to whether, and to what extent, the garage door openers and gate operators of other suppliers can be substituted for CGI's accused products, including whether potential substitutes are made in the United States or overseas. Please include in your analysis, a quantitative analysis of the availability of such substitutes to U.S. consumers both in the near term and in the future.

2. With respect to CGI's assertion that it holds a large share of the U.S. market for garage door openers and gate operators, please identify what percentage share of the U.S. market the accused products comprise of the total market shares asserted by CGI.

3. Please include in your analysis of the public health and welfare, a fulsome explanation, supported by evidence, as to whether and to what extent exclusion of CGI's accused products and substitution of competitors' products raise safety and security concerns for U.S. consumers.

4. CGI contends in its public interest statement that "there was no discovery or findings by the ALJ regarding public interest issues and the record is devoid of adversarially-tested direct evidence that OHD or others have the manufacturing capacity to immediately supply domestic demand if CGI is excluded from the market or the harm that the construction industry and consumers would suffer." Please provide any evidence that supports or disproves CGI's assertion, including how your analysis is to be considered under each applicable statutory public interest factor.

5. If CGI requests a repair/warranty exemption from any remedial orders, please cite and discuss the evidence of record supporting such a request.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that

should be imposed if a remedy is ordered.

**Written Submissions:** The parties to the investigation are requested to file written submissions limited to the briefing questions above. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such initial written submissions should include views on the RD by the ALJ on remedy, the public interest, and bonding. Complainants are also requested to identify the form of remedy sought and to submit proposed remedial orders for the Commission's consideration in their initial written submissions. Complainant is further requested to state the HTSUS subheadings under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation.

Initial written submissions and proposed remedial orders must be filed no later than close of business on December 13, 2021. Reply submissions must be filed no later than the close of business on December 20, 2021 and must be limited to issues raised in the initial written submissions. Initial written submissions may not exceed 70 pages in length, exclusive of any exhibits, while reply submissions may not exceed 45 pages in length, exclusive of any exhibits. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1209") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the

Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission's vote for this determination took place on December 6, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 6, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-26715 Filed 12-9-21; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1221]

### **Certain Electronic Stud Finders, Metal Detectors and Electrical Scanners; Notice of a Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the Administrative Law Judge's ("ALJ") final initial determination ("ID"), issued on October 7, 2021, finding no violation of section 337 in the above-referenced investigation as to three asserted patents. The Commission

requests briefing from the parties on certain issues under review. The Commission also requests briefing from the parties, interested government agencies, and other interested persons on remedy, the public interest, and bonding, as indicated in this notice.

**FOR FURTHER INFORMATION CONTACT:** Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On October 5, 2020, the Commission instituted this investigation based on a complaint filed on behalf of Zircon Corporation of Campbell, California ("Zircon"). 85 FR 62758-59 (Oct. 5, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic stud finders, metal detectors, and electrical scanners by reason of infringement of one or more claims of U.S. Patent Nos. 6,989,662 ("the '662 patent"), 7,148,703 ("the '703 patent"), 8,604,771 ("the '771 patent"), and 9,475,185 ("the '185 patent"). *Id.* at 62759. The Commission's notice of investigation named as respondents Stanley Black & Decker, Inc. of New Britain, Connecticut, and Black & Decker (U.S.), Inc. of Towson, Maryland (together, "Respondents"). *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On April 22, 2021, the ALJ issued a claim construction order based on briefs submitted by the parties. *See* Order No. 20. On June 15, 2021, the ALJ granted a motion for summary determination of no infringement concerning the '703 patent, which terminated that patent from the investigation. *See* Order No. 27, *unreviewed by* Comm'n Notice (July 15, 2021).

On October 7, 2021, the ALJ issued the subject ID on violation, which found no violation of section 337 as to any

claim of the remaining asserted patents by Respondents. Also, on October 7, 2021, the ALJ issued his recommended determination ("RD") on remedy and bonding. The ALJ recommended, upon a finding of violation, that the Commission issue a limited exclusion order and impose a bond in the amount of zero percent of the entered value of any covered products imported during the period of Presidential review.

On October 19, 2021, Zircon and Respondents submitted petitions for review of the ID. On October 27, 2021, Zircon and Respondents submitted responses to the petitions.

Having examined the record of this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID with respect to (1) the ID's infringement findings for the '662 patent; (2) the ID's findings on the technical prong of the domestic industry requirement for the '662 patent; (3) the ID's obviousness findings for the '662 patent; (4) the ID's infringement findings for the '771 patent; (5) the ID's anticipation and obviousness findings for the '771 patent; (6) the ID's claim construction and infringement findings for the '185 patent; (7) the ID's anticipation and obviousness findings for the '185 patent; and (8) the ID's findings on the economic prong of the domestic industry requirement. The Commission has determined not to review the remainder of the ID.

In connection with its review, Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

1. The ID found that the "calibration value" obtained during the calibration mode of claim 1 of the '662 patent must be a reference value for future measurements. Explain why or why not the [redacted] value in the accused products is a reference value for either a [redacted] value or a [redacted] value in those products. Include in your answer an explanation of whether [redacted] values and/or [redacted] values are "future measurements" as that phrase is used by the ID.

2. Was the issue of whether the [redacted] value is a reference value for either [redacted] values or [redacted] values raised before the presiding ALJ? Provide citations to the record identifying all such places where that issue was presented to the ALJ.

3. If the Commission finds that the [redacted] value in the accused products practices the "calibration value" limitation of claim 1, what effect, if any,

would that finding have on the remainder of the ID's findings?

4. Claim 12 of the '662 patent includes the limitation "a comparator adapted to compare the first memory location to the second memory location, thereby determining if the calibration value represents a value sensed over or near the stud, wherein the comparator is operationally coupled to the first and second memories." Within the meaning of that limitation, are the values [redacted] in the accused products stored in either of the claimed "first memory location" or "second memory location"? Support your answer with citations to record evidence.

5. Zircon asserts, through its expert's testimony, that the [redacted] is a comparison of the claimed first and second memory locations. Identify all record evidence supporting or undermining the conclusion that the value [redacted] is stored in the claimed first or second memory location.

6. Identify any evidence of record, whether direct or circumstantial, that shows that Respondents intended to induce their customers to infringe the '622 patent through use of the accused products. Indicate, with citations to the posthearing briefing, whether any evidence of intent you identify was presented to the ALJ.

7. Identify any evidence of record establishing that Respondents possessed a good-faith belief that the users of their accused products did not infringe the '622 patent through use of those accused products. Indicate, with citations to the posthearing briefing, whether any evidence of such a good faith belief was presented to the ALJ.

8. Does the record of this investigation include any findings on the level of ordinary skill in the art with respect to the '662 patent? Identify where in the record any such findings are located. If the record does not include findings on the level of ordinary skill in the art with respect to the '662 patent, explain what the level of ordinary skill art for the '662 patent is. Include any citations to record evidence that support your explanation.

9. Explain whether Respondents have shown that the asserted claims of the '662 patent are obvious according to the analysis laid out in *KSR Intern. Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). Address specifically the effect of the level of ordinary skill in the art for the '662 patent on that analysis.

10. In the context of the '771 and '185 patents, does the evidence of record support the conclusion that the top edge of the Zircon 1 prior art device resists rotational movement of the device, or does not resist rotational movement of the device, when held by a user?

Identify the evidence of record that supports your position.

11. Claim 14 of the '185 patent includes the term "gripping means." Did the parties agree to construe that term as a means-plus function term? If the parties did so agree, what is the term's corresponding function and what is the clearly linked structure in the specification? If the parties did not so agree, what construction, if any, did the parties propose for this term? Identify where in the record, if anywhere, the parties addressed the construction of this term. If the parties did not previously propose a construction for this term, how should it be construed? If you contend that it should be construed according to its plain and ordinary meaning, identify what that plain and ordinary meaning is.

12. Please describe with particularity and citation to the record the activities for which Zircon claims expenditures in: (a) Plant and equipment, (b) labor or capitol, and (c) research and development related to exploitation of the patents at issue. Please provide these values separately for each patent that complainant alleges protects its DI products. Identify where in the record, if anywhere, these activities were presented to the ALJ in support of Zircon's domestic industry contentions.

13. Please state the metric(s) or method(s) by which Zircon seeks to establish that its expenditures falling under section 337(a)(3)(A), (B), and (C) are significant or substantial, in relation to the DI products protected by each patent and state why these measures provide an appropriate basis for assessing whether the claimed expenditures constitute "significant" or "substantial" investments in plant and equipment, labor or capitol, and/or R&D in the United States. Please cite relevant Commission precedent as applicable. Identify which of these bases for assessing whether Zircon's investments are "significant" or "substantial" were presented to the ALJ and which, if any, were not. For arguments presented to the ALJ, include citations to the posthearing briefing where those arguments were raised. For arguments not presented to the ALJ, explain whether those arguments could have been presented to the ALJ.

14. Does the evidence of record support the cost of goods analysis Zircon presents in its petition for review?

15. Discuss cases where the Commission and/or the Federal Circuit have included, as part of a domestic industry's investments in plant and equipment, labor or capital and exploitation of a patent or other IP right,

the complainant's expenditures related to sales, marketing, and/or administrative expenditures and cases where they have not. Please explain whether and why the Commission should or should not consider Zircon's sales, marketing, and/or administrative expenditures in this investigation.

16. Do the activities Zircon conducts in the United States support the conclusion that it is more than a "mere importer"?

17. How much R&D does Zircon conduct abroad relating to (a) the asserted patents and (b) the DI products that Zircon alleges are protected by each asserted patent? What portion of total R&D in these categories are conducted in the United States? How, if at all, does this support the existence of a domestic industry in the United States.

18. Is there a nexus between Zircon's investments in research and development and each of the three remaining patents asserted in this investigation? Identify where, if anywhere, in the posthearing briefing before the ALJ this issue was addressed.

19. Does section 337(a)(2)–(3) require a patent-by-patent analysis of the significance or substantiality of a complainant's domestic industry investments and activities? Identify any precedents from the Commission and/or from the U.S. Court of Appeals for the Federal Circuit that support your position.

20. Concerning the economic prong of the domestic industry requirement, did Zircon advance a patent-by-patent analysis of the significance or substantiality of its investments for each of the asserted patents before the ALJ? Did the ID conduct such a patent-by-patent analysis? Provide any citations to the posthearing briefing before the ALJ and to the ID that support your answer.

The parties are not to brief other issues on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information

establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In their initial submissions, Complainant is also requested to identify the remedy sought and Complainant is requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close

of business on December 20, 2021. Reply submissions must be filed no later than the close of business on January 3, 2022. Opening submissions are limited to 150 pages. Reply submissions are limited to 150 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1221) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on December 6, 2021.

The authority for the Commission's determination is contained in section

337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR 210).

By order of the Commission.

Issued: December 6, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-26719 Filed 12-9-21; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1265]

### Notice of a Commission Determination Not To Review an Initial Determination Granting Respondent Icon's Motion To Amend the Notice of Investigation; Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined not to review an initial determination ("ID") (Order No. 14) of the presiding chief administrative law judge ("CALJ") granting respondent ICON's motion to amend the notice of investigation ("NOI").

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") on May 19, 2021, based on a complaint filed by DISH DBS Corporation of Englewood, Colorado; DISH Technologies, L.L.C., of Englewood, Colorado; and Sling TV L.L.C., of Englewood, Colorado. 86 FR 27106-07 (May 19, 2021). The

complaint alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain fitness devices, streaming components thereof, and systems containing same by reason of infringement of certain claims of U.S. Patent Nos. 9,407,564; 10,469,554; 10,469,555; 10,757,156; and 10,951,680. The notice named as respondents ICON Health & Fitness, Inc., of Logan, Utah ("ICON"); FreeMotion Fitness, Inc., of Logan, Utah; FreeMotion Fitness, Inc., of Logan, Utah; lululemon athletica inc., of Vancouver, Canada; Curiouser Products Inc., of New York, New York; and Peloton Interactive, Inc., of New York, New York. The Commission's Office of Unfair Import Investigations also was named as a party.

On September 24, 2021, pursuant to Commission Rule 210.14(b)(1) (19 CFR 210.14(b)(1)), respondent ICON filed a motion to amend the NOI such "that the name 'ICON Health & Fitness, Inc.' be replaced with 'iFIT Inc.'" and a memorandum in support thereof. The motion states that complainants, the named respondents and the Commission investigative attorney do not oppose the pending motion. No response was filed.

On November 4, 2021, the CALJ issued the subject ID granting the motion. Based on the record evidence, the ID finds that good cause exists to change the name of a respondent from ICON Health & Fitness, Inc. to iFIT Inc. ID at 2 (citing Mem. Ex. 1 (document showing respondent ICON Health & Fitness, Inc.'s corporate name change to iFIT Inc.)). The ID further finds that this amendment would not prejudice the public interest or the rights of the parties to the investigation. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID.

The Commission vote for this determination took place on December 6, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 6, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-26718 Filed 12-9-21; 8:45 am]

**BILLING CODE 7020-02-P**



**DEPARTMENT OF JUSTICE****Notice of Lodging of Proposed First Amendment to Consent Decree**

On November 19, 2021, the Department of Justice lodged a proposed First Amendment to Consent Decree with the United States District Court for the Western District of Louisiana in the lawsuit entitled *United States and the State of Louisiana v. Orion Engineered Carbons, LLC* (W.D. La.), Civil Action No. 6:17-cv-01660.

The Consent Decree, entered by the Court on June 7, 2018, resolved claims by the United States and the State of Louisiana alleging violations of certain Clean Air Act provisions at Orion Engineered Carbons, LLC's ("Defendant's") four carbon black manufacturing facilities in Franklin, Louisiana ("Ivanhoe Facility"), Borger, Texas, Orange, Texas, and Belpre, Ohio ("Belpre Facility"). The Consent Decree requires Defendant to reduce harmful SO<sub>2</sub>, NO<sub>x</sub>, and PM emissions through the installation and operation of pollution controls. Defendant also agreed to spend \$550,000 to fund environmental mitigation projects that will further reduce emissions and benefit communities adversely affected by the pollution from the facilities, and pay a civil penalty of \$800,000.

The proposed First Amendment to Consent Decree would, if entered by the Court, make modifications to the Consent Decree to address and resolve claims by Defendant that force majeure events caused delays in meeting certain compliance deadlines at Defendant's Ivanhoe Facility. The modifications extend certain compliance deadlines at the Ivanhoe Facility and move up certain deadlines at the Belpre Facility. The proposed First Amendment to Consent Decree maintains Defendant's ultimate obligation to install and operate pollution controls at all four facilities.

The publication of this notice opens a period for public comment on the proposed First Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al. v. Orion Engineered Carbon, LLC* (W.D. La.), D.J. Ref. No. 90-5-2-1-10189. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the proposed First Amendment to Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed First Amendment to Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$5.25 (25 cents per page reproduction cost) payable to the United States Treasury.

**Thomas Carroll,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2021-26696 Filed 12-9-21; 8:45 am]

**BILLING CODE 4410-15-P**

**DEPARTMENT OF JUSTICE**

**[OMB Number 1125-0006]**

**Agency Information Collection Activities; Proposed Collection Comments Requested; Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28)**

**AGENCY:** Executive Office for Immigration Review, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for an additional 30 days until January 10, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open

for Public Comments" or by using the search function.

If you need a copy of the proposed information collection or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305-0289.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Executive Office for Immigration Review, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection:* Renewal, with change, of a currently approved collection.

2. *The Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR-28; the sponsoring component is the Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys and qualified representatives notifying the Immigration Court that they are representing a respondent in immigration proceedings. Other: None. Abstract: This information collection is necessary to allow an attorney or

representative to notify the Immigration Court that he or she is representing a respondent before the Immigration Court.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 622,689 respondents will complete the form annually with an average of 6 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 62,269 hours. It is estimated that respondents will take 6 minutes to complete the form.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: December 7, 2021.

**Melody D. Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021-26808 Filed 12-9-21; 8:45 am]

**BILLING CODE 4410-30-P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Earnings Information Report

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before January 10, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) Whether the collection of information is

necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

#### FOR FURTHER INFORMATION CONTACT:

Mara Blumenthal by telephone at 202-693-8538, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act (LHWCA). Pursuant to the LHWCA, injured employees shall receive compensation in an amount equal to 66-2/3 per centum of their average weekly wage. This information is needed for determination of compensation benefits in accordance with section 10 of the LHWCA. Form LS-426, Request for Earnings Information, is used by district offices to collect wage information from injured workers to assure payment of compensation benefits to injured workers at the proper rate. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 24, 2021 (86 FR 33376).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL-OWCP.

*Title of Collection:* Request for Earnings Information Report.

*OMB Control Number:* 1240-0025.

*Affected Public:* Individuals or Households.

*Total Estimated Number of Respondents:* 100.

*Total Estimated Number of Responses:* 100.

*Total Estimated Annual Time Burden:* 25 hours.

*Total Estimated Annual Other Costs Burden:* \$2.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: December 6, 2021.

**Mara Blumenthal,**

*Senior PRA Analyst.*

[FR Doc. 2021-26728 Filed 12-9-21; 8:45 am]

**BILLING CODE 4510-CF-P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Independent Contractor Registration and Identification

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before January 10, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the

collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Nora Hernandez by telephone at 202-693-8633 or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** Title 30 CFR part 45, Independent Contractors, sets forth information requirements and procedures for independent contractors to obtain a MSHA identification number and procedures for service of documents upon independent contractors. The information collections associated with this information collection support the appropriate assessment of fines for violations by independent contractors and the deterrent effect of MSHA enforcement actions on independent contractors. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 16, 2021 (86 FR 32069).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL-MSHA.

*Title of Collection:* Independent Contractor Registration and Identification.

*OMB Control Number:* 1219-0040.

*Affected Public:* Private Sector: Businesses or other for-profit institutions.

*Total Estimated Number of Respondents:* 21,602.

*Total Estimated Number of Responses:* 157,314.

*Total Estimated Annual Time Burden:* 17,080 hours.

*Total Estimated Annual Other Costs Burden:* \$806.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: December 3, 2021.

**Crystal Rennie,**

*Senior PRA Analyst.*

[FR Doc. 2021-26723 Filed 12-9-21; 8:45 am]

**BILLING CODE 4510-43-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[OMB Control No. 1219-0065]

#### Proposed Extension of Information Collection; Petitions for Modification of Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: Requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Petitions for Modification of Mandatory Safety Standards.

**DATES:** All comments must be received on or before February 8, 2022.

**ADDRESSES:** You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

*Electronic Submissions:* Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2021-0033. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket, with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.

- If your comment includes confidential information that you do not

wish to be made available to the public, submit the comment as a written/paper submission.

*Written/Paper Submissions:* Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at [MSHA.information.collections@dol.gov](mailto:MSHA.information.collections@dol.gov) (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines. Under section 101(c) of the Mine Act, 30 U.S.C. 811(c), the Secretary may modify the application of a mandatory safety standard to a mine, upon petition by the operator or the representative of miners, if the Secretary determines (1) that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

Under 30 CFR 44.9, operators of mines for which there is no representative of miners must post a copy of each petition for modification concerning the mine on the mine bulletin board and maintain the posting until a ruling on the petition becomes final.

Under 30 CFR 44.10, detailed guidance for filing a petition for modification is provided for the operator of the affected mine or any representative of the miners at that mine. The petition must be in writing, filed with the Director, Office of Standards, Regulations, and Variances, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 CFR 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

## II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Petitions for Modification of Mandatory Safety Standards. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Background documents related to this information collection request are available at <https://regulations.gov> and at DOL-MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Questions about the information collection requirements

may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT:** section of this notice.

## III. Current Actions

This information-collection request concerns provisions for petitions for modification of mandatory safety standards under part 44 of 30 CFR. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219-0065.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 56.

*Frequency:* On occasion.

*Number of Responses:* 56.

*Annual Burden Hours:* 2,240 hours.

*Annual Respondent or Recordkeeper Cost:* \$28,545.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

**Song-ae Aromie Noe,**  
*Certifying Officer.*

[FR Doc. 2021-26725 Filed 12-9-21; 8:45 am]

**BILLING CODE 4510-43-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[OMB Control No. 1219-0082]

#### Proposed Extension of Information Collection; Records of Preshift and Onshift Inspections of Slope and Shaft Areas at Coal Mines

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that Requested data can be provided in the

desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Records of Preshift and Onshift Inspections of Slope and Shaft Areas of Slope and Shaft Sinking Operations at Coal Mines (pertains slope and shaft sinking operations at coal mines).

**DATES:** All comments must be received on or before February 8, 2022.

**ADDRESSES:** You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

*Electronic Submissions:* Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2021-0035. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket, with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.

- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

*Written/Paper Submissions:* Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at [MSHA.information.collections@dol.gov](mailto:MSHA.information.collections@dol.gov)

(email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

The sinking of slopes and shafts is a particularly hazardous operation where conditions change drastically in short periods of time. Explosive methane and other harmful gases can be expected to infiltrate the work environment at any time. The working environment is typically a confined area in close proximity to moving equipment. Accordingly, 30 CFR 77.1901 requires operators to examine slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift, once during each shift when employees are inside any slope or shaft during development, and before and after blasting. The surface area surrounding each slope and shaft is also required to be inspected for hazards.

The standard also requires that a record be kept of the results of the inspections. The record includes a description of any hazardous condition found and the corrective action taken to abate it. The record is necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified, thereby ensuring a safe working environment for the slope and shaft sinking employees. The record is maintained at the mine site for the duration of the operation.

##### II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Records of Preshift and Onshift Inspections of Slope and Shaft Areas of Slope and Shaft Sinking Operations at Coal Mines (pertains slope and shaft sinking operations at coal mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the

Agency, including whether the information has practical utility;

- Evaluate the accuracy of MSHA's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Background documents related to this information collection request are available at <https://regulations.gov> and at DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT:** section of this notice.

##### III. Current Actions

This information collection request concerns provisions for records of preshift and onshift inspections of slope and shaft areas at coal mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0082.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 15.

*Frequency:* On occasion.

*Number of Responses:* 6,600.

*Annual Burden Hours:* 8,250 hours.

*Annual Respondent or Recordkeeper Cost:* \$0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

**Song-ae Aromie Noe,**  
*Certifying Officer.*

[FR Doc. 2021–26726 Filed 12–9–21; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[OMB Control No. 1219–0051]

#### Proposed Extension of Information Collection; Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: Requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines.

**DATES:** All comments must be received on or before February 8, 2022.

**ADDRESSES:** You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

*Electronic Submissions:* Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for docket number MSHA–2021–0031. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket, with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.

- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

*Written/Paper Submissions:* Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor’s COVID–19 policy. Special health precautions may be required.

- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at [MSHA.information.collections@dol.gov](mailto:MSHA.information.collections@dol.gov) (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

The escape and evacuation plan required by 30 CFR 77.1101 is prepared by the mine operator and is used by mines, MSHA, and persons involved in rescue and recovery operations. The plan is used to instruct employees in the proper methods to evacuate structures in the event of a fire. MSHA inspection personnel use the plan to determine compliance with the standard requiring a means of escape and evacuation be established and the requirement that employees be instructed in the procedures to follow should a fire occur.

**II. Desired Focus of Comments**

MSHA is soliciting comments concerning the proposed information collection related to Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper

performance of the functions of the Agency, including whether the information has practical utility;

- Evaluate the accuracy of MSHA’s estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Background documents related to this information collection request are available at <https://regulations.gov> and at DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT:** section of this notice.

**III. Current Actions**

This information collection request concerns provisions for escape and evacuation plans for surface coal mines, surface facilities and surface work areas of underground coal mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0051.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 35.

*Frequency:* On occasion.

*Number of Responses:* 35.

*Annual Burden Hours:* 150 hours.

*Annual Respondent or Recordkeeper Cost:* \$0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

**Song-ae Aromie Noe,**  
*Certifying Officer.*

[FR Doc. 2021–26724 Filed 12–9–21; 8:45 am]

**BILLING CODE 4510–43–P**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

[OMB Control No. 1219–0135]

**Proposed Extension of Information Collection; Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines)**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: Requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines).

**DATES:** All comments must be received on or before February 8, 2022.

**ADDRESSES:** You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

*Electronic Submissions:* Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA–2021–0038. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket, with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else’s Social Security number or confidential business information.

- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

*Written/Paper Submissions:* Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment in keeping with the Department of Labor’s COVID–19 policy. Special health precautions may be required.

- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at [MSHA.information.collections@dol.gov](mailto:MSHA.information.collections@dol.gov) (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Diesel particulate matter (DPM) is a carcinogen that consists of tiny particles present in diesel-engine exhaust that can readily penetrate into the deepest recesses of the lungs. Despite ventilation, the confined underground mine work environment may contribute to significant concentrations of particles produced by equipment used in the mine. Underground miners are exposed to higher concentrations of DPM than any other occupational group. As a result, they face a significantly greater risk than other workers of developing such diseases as lung cancer, heart failure, serious allergic responses, and other cardiopulmonary problems.

The DPM regulation established a permissible exposure limit to total carbon, which is a surrogate for measuring a miner’s exposure to DPM. These regulations include a number of other requirements for the protection of miners’ health. The DPM regulations contain information collection requirements for underground metal

nonmetal mine operators under sections 57.5060, 57.5065, 57.5066, 57.5070, 57.5071, and 57.5075(a) and (b)(3).

**II. Desired Focus of Comments**

MSHA is soliciting comments concerning the proposed information collection related to Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA’s estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Background documents related to this information collection request are available at <https://regulations.gov> and at DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

**III. Current Actions**

This information collection request concerns provisions for health standards for diesel particulate matter exposure in underground metal and nonmetal mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0135.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 194.

*Frequency:* On occasion.

*Number of Responses:* 54,696.

*Annual Burden Hours:* 11,218 hours.

*Annual Respondent or Recordkeeper*

*Cost:* \$421,942.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

**Song-ae Aromie Noe,**  
*Certifying Officer.*

[FR Doc. 2021–26727 Filed 12–9–21; 8:45 am]

**BILLING CODE 4510–43–P**

**LEGAL SERVICES CORPORATION**

**Federal Register Notice of Request for Comments; Re: 2021 LSC Agricultural Worker Poverty Population Estimates**

**AGENCY:** Legal Services Corporation.  
**ACTION:** Request for comments.

**SUMMARY:** The Legal Services Corporation (LSC) provides special population grants to effectively and efficiently fund civil legal aid services to address the legal needs of agricultural workers and their dependents through grants entitled “Basic Field—Agricultural Workers.” The funding for these grants is based on data regarding the eligible client population to be served. LSC obtained from the U.S. Department of Labor data about this population that updates the data the Department of Labor provided in 2016. LSC seeks comments on the updated data, which LSC will begin using for grant allocations on January 1, 2022.

**DATES:** Comments must be submitted by January 10, 2022.

**ADDRESSES:** Written comments must be submitted to [agworkerpopulation@lsc.gov](mailto:agworkerpopulation@lsc.gov) with attachments in Acrobat PDF format. If you cannot submit your comments by email, please contact LSC regarding alternatives for submission by calling Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 202–295–1623. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

**FOR FURTHER INFORMATION CONTACT:** Mark Freedman, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St. NW, Washington, DC 20007; 202–295–1623 (phone); 202–337–6519 (fax); [mfreedman@lsc.gov](mailto:mfreedman@lsc.gov).

**SUPPLEMENTARY INFORMATION:** The Legal Services Corporation (“LSC” or “Corporation”) was established through the LSC Act “for the purpose of providing financial support for legal assistance in noncriminal matters or

proceedings to persons financially unable to afford such assistance.” 42 U.S.C. 2996b(a). LSC performs this function primarily through distributing funding appropriated by Congress to independent civil legal aid programs providing legal services to low-income persons throughout the United States and its possessions and territories. 42 U.S.C. 2996e(a)(1)(A). LSC designates geographic service areas and structures grants to support services to the entire eligible population in a service area or to a specified subpopulation of eligible clients. 45 CFR 1634.2(c) & (d), 1634.3(b). LSC awards these grants through a competitive process. 45 CFR part 1634. Congress has mandated that LSC “insure those grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas.” 42 U.S.C. 2996f(a)(3).

Throughout the United States and U.S. territories, LSC provides Basic Field—General grants to support legal services for eligible clients. LSC provides funding for those grants on a per-capita basis using the poverty population as determined by the U.S. Census Bureau every three years. Public Law 104–134, tit. V, 501(a), 110 Stat. 1321, 1321–50 (1996), as amended by Public Law 113–6, div. B, tit. IV, 127 Stat. 198, 268 (2013) (LSC funding formula adopted in 1996, incorporated by reference in LSC’s appropriations thereafter, and amended in 2013). Since its establishment in 1974, LSC has also provided subpopulation grants to support legal services for the needs of agricultural workers through Basic Field—Agricultural Worker grants under the authority of the LSC Act to structure grants for the most economic and effective delivery of legal assistance. 42 U.S.C. 2996f(a)(3).

LSC provides funding for Basic Field—Agricultural Worker grants on a per-capita basis by determining the size of the agricultural worker poverty population and separating that population from the overall poverty population for the applicable geographic area or areas. LSC expects programs receiving these grants to serve the legal needs of a broad range of eligible agricultural workers and their dependents who have specialized legal needs that are most effectively and efficiently served through a dedicated grant program.

The United States Department of Labor, Employment and Training Administration (ETA) collects data regarding agricultural workers for federal grants serving the needs of the American agricultural worker population. The U.S. Census Bureau

does not maintain data regarding agricultural workers. In 2016 LSC contracted with ETA for these data, including state-by-state breakdowns. A description of those data and their development is available at: <https://www.lsc.gov/grants/basic-field-grant/lsc-service-areas/agricultural-worker-population-estimates-2016-update>.

In 2020 and 2021, LSC began the process of updating this data. LSC sought and obtained input from legal aid programs serving these eligible clients and from the National Legal Aid and Defender Association. More information about that process is available at: <https://www.lsc.gov/grants/basic-field-grant/lsc-service-areas/agricultural-worker-population-estimate-2021-update>.

With consideration of the input provided, LSC contracted with ETA to provide more current data regarding agricultural worker population for grants beginning January 1, 2022. ETA has provided updated estimates based on an estimation methodology designed to improve the accuracy and validity of the estimates. The changes in data will result in changes in funding levels for these grants. LSC will begin using these estimates for grant allocations starting January 1, 2022.

The updated estimates, the estimation methodology and additional materials are available at: <https://www.lsc.gov/grants/basic-field-grant/lsc-service-areas/agricultural-worker-population-estimate-2021-update>.

LSC invites public comment on this issue. Interested parties may submit comments to LSC before the deadline stated above.

Dated: December 7, 2021.

**Mark Freedman,**

*Senior Associate General Counsel.*

[FR Doc. 2021–26722 Filed 12–9–21; 8:45 am]

**BILLING CODE 7050–01–P**

## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2021–7]

#### Deferred Registration Examination Study: Notice and Request for Public Comment

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

**SUMMARY:** The U.S. Copyright Office is undertaking a public study to evaluate the merits of providing an option to defer examination of copyright registration application materials until a

later request by the applicant. To aid in this effort, the Office is soliciting input from interested members of the public.

**DATES:** Written comments must be received no later than 11:59 p.m. Eastern Time on January 24, 2022.

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <https://www.copyright.gov/policy/deferred-examination>. 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.

**FOR FURTHER INFORMATION CONTACT:** Megan Efthimiadis, Assistant to the General Counsel, by email at [mef@copyright.gov](mailto:mef@copyright.gov) or telephone at (202) 707–8350.

**SUPPLEMENTARY INFORMATION:** On May 24, 2021, Senator Thom Tillis sent a letter seeking the Copyright Office’s “expertise and guidance regarding adjusted copyright examination and registration requirements.”<sup>1</sup> He requested that the Office complete “a study regarding the feasibility, benefits, and costs of creating an option for deferring examination of an application.”<sup>2</sup> The letter further provides:

The study should focus on adding an option for registering a work in which the registrant can obtain an effective date of registration upon submission of an application and deposit, while choosing to defer the examination of the submitted work until the registrant subsequently requests such an examination. It should also consider and address what, if any, statutory changes would be necessary to enable applicants who are given such an effective date of registration to be able to commence a civil lawsuit in light of *Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019). . . . [T]his study must also take particular account of the needs of the Library to maintain and grow its collections.<sup>3</sup>

<sup>1</sup> Letter from Senator Thom Tillis, Ranking Member, S. Comm. on the Judiciary, Subcomm. on Intellectual Prop., to Shira Perlmutter, Register of Copyrights, U.S. Copyright Office at 1 (May 24, 2021), <https://www.copyright.gov/policy/deferred-examination>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 1–2.



## I. Background

### A. The Current Registration System

Under the Copyright Act, copyright protection attaches automatically to an original work of authorship as soon as it is created and fixed in tangible form.<sup>4</sup> Registration of a claim to copyright is not required.<sup>5</sup> Although registration is optional, the Copyright Act provides substantial incentives to encourage early registration. First, a certificate of registration issued by the Office after examination constitutes *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate, if the registration is made before or within five years of the work's first publication.<sup>6</sup> Second, the Act provides that copyright owners are eligible to obtain statutory damages and attorney's fees only if the effective date of registration ("EDR") is within three months of first publication or before the infringement commences.<sup>7</sup> Finally, a civil action for copyright infringement involving a United States work may not be instituted until registration has been made or refused by the Office.<sup>8</sup>

To apply for registration, an applicant must deliver to the Office a completed application form, the applicable filing fee, and a deposit consisting of a complete copy (or copies) of the work to be registered.<sup>9</sup> The Office "examin[es]" the "material deposited" to determine whether it "constitutes copyrightable subject matter" and whether "the other legal and formal requirements of [title 17] have been met."<sup>10</sup> This examination includes confirming that the correct filing fee was submitted and that applicable Office regulations and practices have been complied with (*e.g.*, whether the type of registration used is available for the applicant's claim).<sup>11</sup> It also includes reviewing the application to ensure that the facts stated are not contradicted by each other or by

information in the deposit or elsewhere in the materials submitted.<sup>12</sup>

After examination, if the Office determines that the work constitutes copyrightable subject matter and that the other requirements have been met, it will register the claim and issue a certificate of registration.<sup>13</sup> The Office will also create an official public record of the registration in its searchable online records catalog and will make the deposit copies available for public inspection.<sup>14</sup> This public record includes key facts relating to the authorship and ownership of the claimed work, as well as other information, including the title, year of creation, date of publication, and the type of authorship.<sup>15</sup> If the Office determines that a work is not copyrightable or that the claim is invalid for any other reason, the Office will refuse registration and will not issue a certificate or create an entry in the public catalog.<sup>16</sup>

While the Office offers several registration options,<sup>17</sup> there is currently no option to delay or defer examination of the submitted application materials. The Office does, however, offer an option to preregister certain classes of works,<sup>18</sup> without the more comprehensive review undertaken as part of the full registration process. Preregistration enables rightsholders to sue in court prior to full registration, if followed later with an application package for full registration within the statutorily allotted time.<sup>19</sup> Instead of submitting a deposit copy of the work for examination, preregistration applicants only need to provide a short description of the work, and the Office conducts only a limited review of the application to ascertain whether the

work is in a class for which the preregistration option is available.<sup>20</sup>

### B. Previously Received Public Comments

In connection with broader efforts to modernize its technological infrastructure, the Office has solicited public input in prior proceedings concerning the registration process. In some of these proceedings, commenters discussed proposals concerning a deferred examination registration option (which they also sometimes referred to as delayed examination or provisional registration).<sup>21</sup> To help inform public comment in the present proceeding, these previous proposals are briefly summarized below.<sup>22</sup>

While commenters varied in their proposed approaches, they generally envisioned a deferred examination option with the following components: (1) An applicant could submit the application materials for full registration at a discounted fee;<sup>23</sup> (2) the Office

<sup>20</sup> 37 CFR 202.16(c)(6)–(7).

<sup>21</sup> These proceedings include: Registration Modernization, Dkt. No. 2018–9 (comments available at <https://copyright.gov/rulemaking/reg-modernization/>); Copyright Office Fees, Dkt. No. 2018–4 (comments available at <https://copyright.gov/rulemaking/feestudy2018/>); Group Registration of Photographs, Dkt. No. 2016–10 (comments available at <https://copyright.gov/rulemaking/group-photographs/>); and Copyright Protection for Certain Visual Works, Dkt. No. 2015–1 (comments available at <https://copyright.gov/policy/visualworks/>).

<sup>22</sup> The Office notes that these comments were all received before the Supreme Court's decision in *Fourth Estate* and prior to the significant reduction in registration processing times achieved by the Office over the last few years—from an overall average of about seven months to about three months for all claims, with approximately 70% of all applications now being processed in about 1.9 months on average. U.S. Copyright Office, *Registration Processing Times*, <https://copyright.gov/registration/docs/processing-times-faqs.pdf> (last visited December 6, 2021); see generally U.S. Copyright Office, *Explanation of U.S. Copyright Office Registration Processes and Challenges* (May 31, 2019), <https://www.copyright.gov/laws/hearings/response-to-march-14-2019-senate-letter.pdf>.

<sup>23</sup> See, *e.g.*, Coalition of Visual Artists ("CVA") Registration Modernization 2018 NOI Comments at 3, 18; Copyright Alliance Registration Modernization 2018 NOI Comments at 11 ("[T]he fee associated with the Delayed Examination Registration would be significantly less than the fee paid associated with an examined application."); ImageRights International ("ImageRights") Registration Modernization 2018 NOI Comments at 4 (explaining that the fees for a deferred examination option should be "nominal" and "palatable" because the option would "eliminate the need and costs for the specialists to review every single [work] submitted"); Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 34 ("Provisional registration should cost less for the first step, and cost the same in total after the second step as a regular complete examination and registration."); Professional Photographers of America ("PPA") Office Fees Initial Comments at 22; see also CVA Registration

<sup>4</sup> 17 U.S.C. 102(a) ("Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression."); see *id.* 302(a) ("Copyright in a work created on or after January 1, 1978, subsists from its creation.")

<sup>5</sup> *Id.* 408(a) ("Such registration is not a condition of copyright protection.")

<sup>6</sup> *Id.* 410(c).

<sup>7</sup> *Id.* 412. Section 410(d) states that the EDR "is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office."

<sup>8</sup> *Id.* 411(a); see also *Fourth Estate Pub. Ben. Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019).

<sup>9</sup> 17 U.S.C. 408, 409, 708; see also U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 204 (3d ed. 2021) ("Compendium (Third)").

<sup>10</sup> 17 U.S.C. 410(a).

<sup>11</sup> *Compendium (Third)* secs. 206, 602.4.

<sup>12</sup> *Id.* at secs. 206, 602.4, 603, 609.

<sup>13</sup> 17 U.S.C. 410(a).

<sup>14</sup> *Id.* 705(a)–(b).

<sup>15</sup> The Office's online public records catalog is available at <https://cocatalog.loc.gov>.

<sup>16</sup> 17 U.S.C. 410(b).

<sup>17</sup> For example, the Office issues basic registrations to register copyright claims in individual works and certain works containing separate and independent works, such as collective works and units of publication; group registrations to register copyright claims in groups of related works, such as photographs and unpublished works; renewal registrations to cover the renewal term for works copyrighted before January 1, 1978; and supplementary registrations to correct or amplify the information in a registration. See *Compendium (Third)* secs. 202.1, 1402.3.

<sup>18</sup> Preregistration is currently available for motion pictures, sound recordings, musical compositions, literary works being prepared for publication in book form, computer programs (including video games), and advertising or marketing photographs. 37 CFR 202.16(b)(1).

<sup>19</sup> 17 U.S.C. 408(f), 411(a).

would not immediately examine any of the materials;<sup>24</sup> (3) the Office would still ingest information about the unregistered work into the public catalog, retain the deposit, and make it available for the Library's collections;<sup>25</sup> (4) if later requested, for an additional fee, the Office would examine the application materials and decide whether or not to register the work;<sup>26</sup> and (5) if the Office registered the work,

Modernization 2018 NOI Comments at 23–24 (stating that “[s]urvey results indicate broad support for . . . possibly us[ing] online, tiered subscriptions” where “[t]he registrant would opt only to register provisionally, in exchange for a lower subscription fee”); ImageRights Registration Modernization 2018 NOI Comments at 4 (asking the Office to consider whether the fee should be subscription based, allowing “a claimant to submit provisional registrations of an unlimited number of photographs”); CVA Group Registration of Photographs Comments at 59 (“The Copyright Office could create tiered registration fees for specific quantities of images included in a group registration.”).

<sup>24</sup> See, e.g., CVA Registration Modernization 2018 NOI Comments at 18 (“Copyright owners would pay a discounted fee for a registration of works without an immediate examination by the Copyright Office.”); Copyright Alliance Registration Modernization 2018 NOI Comments at 11 (explaining that the application materials submitted under the deferred examination option “would not be examined by the Copyright Office” when initially submitted “so no certificate would be issued”); Graphic Artists Guild (“GA Guild”) Registration Modernization 2018 NOI Comments at 4–5.

<sup>25</sup> See, e.g., Copyright Alliance Registration Modernization 2018 NOI Comments at 14 & n.17 (stating that “[t]he increase in registrations would improve the public record,” “[t]he Office could easily include a distinction between Delayed Examination Registrations and examined registrations in the database, so as to make clear which works have been examined,” and “[a]n increase in registrations would increase the number of deposits for the Library”); CVA Registration Modernization 2018 NOI Comments at 20–21; PPA Registration Modernization 2018 NOI Comments at 13 (“Provisional registration could be paired with a self-deposit system in which creators could create their own database of works, which would be open to the Copyright Office and others for interactive searching.”); Copyright Alliance Office Fees Initial Comments at 19–20; PPA Office Fees Initial Comments at 22; Digital Public Library of America (“DPLA”) Visual Works Study Initial Comments at 5.

<sup>26</sup> See, e.g., CVA Registration Modernization 2018 NOI Comments at 19 (“If a copyright holder subsequently wanted to bring an infringement suit, they would simply pay the Copyright Office a separate fee to have the ‘provisional registration’ examined for originality and other formalities and converted to a regular registration.”); Copyright Alliance Registration Modernization 2018 NOI Comments at 11–12 (“If a rights holder wants to bring an infringement case, the rights holder would have to convert the Delayed Examination Registration to an examined registration, which would necessitate . . . the Office examining the Delayed Examination and approving its conversion into an examined registration, and . . . paying a conversion fee.”); ImageRights Registration Modernization 2018 NOI Comments at 4; Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 34; Shaftel & Schmelzer Office Fees Initial Comments at 27–28; CVA Group Registration of Photographs Comments at 58.

then the statutory benefits of registration would attach, with an EDR reflecting the date when the original deferred examination application materials were received.<sup>27</sup> Commenters generally seemed to contemplate that examination and full registration would primarily be sought in connection with an infringement suit.<sup>28</sup> No commenter proposed eliminating the current registration process for those who prefer immediate examination.<sup>29</sup>

Commenters offered different proposals regarding eligibility for deferred examination. Some recommended that the option only be available for “high-volume registrations”<sup>30</sup> or specific classes of works like photographs,<sup>31</sup> while others suggested it be available for all works.<sup>32</sup> With respect to who should be eligible to request later examination of a deferred examination claim, the Copyright Alliance suggested that the party should be the “rights holder,”<sup>33</sup> while CVA proposed that “a party other than the copyright holder” who is seeking “a declaration of non-infringement or other legal proceeding” should also “be permitted to pay the fee and have the Copyright Office undertake a final review of the [deferred examination] application” materials.<sup>34</sup>

<sup>27</sup> See, e.g., GA Guild Registration Modernization 2018 NOI Comments 4–5 (“[O]nce the registration is converted to a regular registration, the copyright owner would then have all the statutory benefits of a regular registration, with the effective date of registration being the date the Copyright Office received the provisional registration.”); CVA Registration Modernization 2018 NOI Comments at 18–19 (“The EDR for determining benefits under copyright law . . . would be the date the Copyright Office received the ‘Provisional Application’ along with the required deposit copy and fee payment.”); Copyright Alliance Registration Modernization 2018 NOI Comments at 12; PPA Registration Modernization 2018 NOI Comments at 13; CVA Group Registration of Photographs Comments at 59 (“When the application for deferred examination is approved, the effective date of the registration will date back to when the materials were filed, as is the present establishment of date of registration.”).

<sup>28</sup> See, e.g., CVA Registration Modernization 2018 NOI Comments at 19; Copyright Alliance Registration Modernization 2018 NOI Comments at 11–12; PPA Office Fees Initial Comments at 22; Shaftel & Schmelzer Office Fees Initial Comments at 27–28.

<sup>29</sup> See, e.g., PPA Registration Modernization 2018 NOI Comments at 14; Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 33 (“We also want the Copyright Office to keep the existing immediate examination system, too, for authors/creators who ask for it.”).

<sup>30</sup> PPA Office Fees Initial Comments at 22.

<sup>31</sup> ImageRights Registration Modernization 2018 NOI Comments at 4.

<sup>32</sup> CVA Registration Modernization 2018 NOI Comments at 18; Copyright Alliance Registration Modernization 2018 NOI Comments at 11.

<sup>33</sup> Copyright Alliance Registration Modernization 2018 NOI Comments at 11–12.

<sup>34</sup> CVA Registration Modernization 2018 NOI Comments at 19.

Commenters also expressed different opinions regarding the appropriate time limit, if any,<sup>35</sup> for examination to be requested. Some commenters suggested that the examination request should be made within a specific time period; if not, the applicant would lose the benefit of having filed the deferred examination application.<sup>36</sup> Some proposed that this period be as short as one year, while others proposed that it be as long as the full term of the copyright.<sup>37</sup>

Comments also diverged with respect to how the deferred examination option would impact the registration prerequisite for instituting a civil action for infringement. While most commenters supported maintaining the existing registration rule,<sup>38</sup> CVA asked the Office to consider whether a request to examine the deferred examination application materials “should be sufficient for filing a lawsuit, or should be moved to the ‘front of the line’ for immediate processing.”<sup>39</sup>

Commenters encouraged the Office to explore how best to administer a deferred examination option, taking into account its budget and resources.<sup>40</sup>

<sup>35</sup> See Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 34 (“There should be no deadline to convert the first step of a provisional registration to finalize the completed examined registration, and no sunset on the EDR of works submitted for the first step.”)

<sup>36</sup> Copyright Alliance Registration Modernization 2018 NOI Comments at 12 n.14.

<sup>37</sup> CVA Registration Modernization 2018 NOI Comments at 20 (“[W]e believe that a provisional registrant should be able to finalize registration any time in the life of the copyright.”); Copyright Alliance Registration Modernization 2018 NOI Comments at 12 n.14 (“Some of our members believe the time period should be as long as the term of protection, while others believe it should be as short as 1 year.”); ImageRights Registration Modernization 2018 NOI Comments at 4 (suggesting claimants would have “some period” of time to request examination).

<sup>38</sup> See e.g., PPA Registration Modernization 2018 NOI Comments at 14 (“Those who choose to utilize provisional registration and self-deposit would establish an effective date of registration but would not be considered to have satisfied the Section 411 requirement to bring suit.”); CVA Registration Modernization 2018 NOI Comments at 19; Copyright Alliance Registration Modernization 2018 NOI Comments at 11–12 (“If a rights holder wants to bring an infringement case, the rights holder would have to convert the Delayed Examination Registration to an examined registration.”); DPLA Visual Works Study Initial Comments at 5 (stating that deferred examination should “not carry the full benefits of full registration, such as access to statutory damages and attorney’s fees”).

<sup>39</sup> CVA Registration Modernization 2018 NOI Comments at 19–20.

<sup>40</sup> Copyright Alliance Office Fees Initial Comments at 20 (“The Office should also articulate any barriers it believes it faces in implementing innovative fee structures. It’s one thing if the Office is restricted from implementing certain changes because the statute does not provide it the authority to do so, but it’s another if the Office is restricted because of practical or technological limitations—

Commenters also identified a number of potential benefits of offering a deferred examination option, including increasing the number of registrations,<sup>41</sup> encouraging timely registrations,<sup>42</sup> expanding the public record,<sup>43</sup> improving the Office's efficiency by removing the examination step,<sup>44</sup> decreasing processing times,<sup>45</sup> lowering the Office's expenses,<sup>46</sup> and increasing

the latter being much easier to address. The Office should also explore other ways to reduce examination costs in addition to modernizing.”)

<sup>41</sup> Copyright Alliance Registration Modernization 2018 NOI Comments at 13–14 (stating that deferred examination would “help incentivize those who want to register but cannot afford to do so under the existing system”); GA Guild Registration Modernization 2018 NOI Comments at 5 (stating that deferred examination would “provide individual copyright holders an affordable means to effectively register their works and avail themselves of the protections of registration”); PPA Office Fees Initial Comments at 22 (“With the lower provisional fee, this approach would encourage creators to register more often.”); CVA Registration Modernization 2018 NOI Comments at 21 (stating that deferred examination would result in “lower registration fees, faster processing, and drastically increased limits on the number of works in a single registration”); DPLA Visual Works Study Initial Comments at 5; Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 34.

<sup>42</sup> Copyright Alliance Registration Modernization 2018 NOI Comments at 13 (stating that deferred examination would “[e]ncourage rights holders to register more quickly and not wait to determine which of their works are commercially valuable or infringed before registering”).

<sup>43</sup> CVA Registration Modernization 2018 NOI Comments at 21 (“[T]he public record would benefit from the increased registrations.”); Copyright Alliance Registration Modernization 2018 NOI Comments at 13; PPA Office Fees Initial Comments at 22.

<sup>44</sup> Copyright Alliance Registration Modernization 2018 NOI Comments at 12 (stating that deferred examination would “increase the Office's efficiency by eliminating the need to fully review every single application that comes through the door and thus also lower the Copyright Office expenses and improve pendency”); CVA Registration Modernization 2018 NOI Comments at 21 (“Under a provisional registration system, the Copyright Office would eliminate the expensive and inefficient burden of examining all works.”); Shaftel & Schmelzer Registration Modernization 2018 NOI Comments at 33 (“Provisional registration solves time-consuming examination procedures for the Copyright Office. Very few copyright registrations are actually litigated in courts.”).

<sup>45</sup> CVA Registration Modernization 2018 NOI Comments at 21 (stating that deferred examination would result in “faster processing”); PPA Registration Modernization 2018 NOI Comments at 14 (discussing how a deferred examination option creates “a system for receiving simplified registrations that require a minimum of manpower to process (or none at all in an automated system)”).

<sup>46</sup> Copyright Alliance Registration Modernization 2018 NOI Comments at 14 (“It will be easier for the Copyright Office to balance its budget by allowing the Office to use congressional appropriations on modernization or other expenses, rather than to subsidize registration examination.”); *id.* at 12–13 (“If Delayed Examination Registrations were permitted, the Office would set the fee for a Delayed Examination Registration to be equal to the cost of processing the application, thereby allowing the Office to benefit from increased filings without losing money.”).

the number of deposits available for the Library's collections.<sup>47</sup>

## II. Subjects of Inquiry

The Office invites written comments on the subjects below. A party choosing to respond to this Notice of Inquiry need not address every subject, but the Office requests that responding parties clearly identify and separately address each subject for which a response is submitted. The Office also requests that commenters explain their interest in the study and, with respect to each answer, the basis for their knowledge.

### A. Purpose of Deferred Examination Option

1. What specific perceived deficiencies in the current registration regime could a deferred examination option address?

2. What are the potential benefits and drawbacks to offering a deferred examination option? Responses should consider the positive and negative effects on both copyright owners and users, as well as on the registration system itself, and should include any empirical data or other evidence relevant to your assertions. Responses should also consider whether, or to what extent, a deferred examination option might either further or impede the purposes of registration.<sup>48</sup>

### B. Procedural Issues

3. If you are advocating for a deferred examination option, describe the specific legal or regulatory framework you envision. Would any statutory amendments be necessary?

4. Should a deferred examination option have any work-based, applicant-based, or other eligibility restrictions? For example, should the availability of the option depend on whether the work belongs to a specific class of works (*e.g.*, photographs), is published or unpublished, and/or is deposited in physical or electronic form?

5. How should deferred examination operate in connection with an application to register multiple works?

6. How should the filing fees be determined for a deferred examination option, including both for the initial

<sup>47</sup> Copyright Alliance Registration Modernization 2018 NOI Comments at 14 (“An increase in registrations would increase the number of deposits for the Library.”); CVA Registration Modernization 2018 NOI Comments at 20 (noting that the proposal “would generate a significant upsurge in the public record surrounding copyrighted works as well as deposits to the Library of Congress”).

<sup>48</sup> See U.S. Copyright Office, *Explanation of U.S. Copyright Office Registration Processes and Challenges* at 3–6 (May 31, 2019), <https://www.copyright.gov/laws/hearings/response-to-march-14-2019-senate-letter.pdf>.

submission and later examination, and how should they compare with fees where examination is not deferred?

7. Should applications for deferred examination undergo any kind of initial review (*e.g.*, to verify the accuracy of the filing fee, that the application is complete, that the deposit is in the correct form, etc.)?

8. Who should be permitted to request examination of a deferred examination application package? For example, should such a request be limited to an author or copyright owner, or should other interested parties also be permitted to request examination?

9. Should there be a time limit for requesting examination (*e.g.*, one year)? If so, what should be the ramifications of failing to request examination within the prescribed period? Responses should consider the implications for the Office's administration of the registration system, including the retention and storage of deposits and other application materials, as well as the governing principles that should apply to an eventual examination.

10. How, if at all, should a deferred examination option account for any changes in the required application information that occur between submission and examination (*e.g.*, a change in ownership or publication status)?

11. How, if at all, should any deficiencies in the application materials discovered during examination be addressed with respect to the EDR and the current requirements of section 410?<sup>49</sup>

### C. Impact

12. How, if at all, would a deferred examination option affect the public records maintained by the Office? For example, should information about a work submitted for registration using a deferred examination option be indexed into the public catalog prior to the claim being examined and registered? What are the potential benefits and drawbacks to such an approach? For example, how, if at all, may it affect the integrity and reliability of the public record?

13. How, if at all, might a deferred examination option affect the ability of the Library of Congress to maintain and grow its collections?<sup>50</sup> For example,

<sup>49</sup> See CVA Registration Modernization 2018 NOI Comments at 20 (“There should be a stop-gap that allows errors in registration to be fixed with the EDR being preserved and warns registrants of the risks.”).

<sup>50</sup> See 17 U.S.C. 704(b) (“In the case of published works, all copies, phonorecords, and identifying material deposited are available to the Library of Congress for its collections, or for exchange or transfer to any other library. In the case of

Continued

should a work submitted for registration using a deferred examination option when the claim has not yet been examined and registered be eligible for selection for the Library's collections? What are the potential benefits and drawbacks to such an approach?

14. How, if at all, might a deferred examination option affect the ability to bring suit in light of the Supreme Court's decision in *Fourth Estate Public Benefit Corp. v. Wall-Street.com, LLC*? For example, should a later request for examination be sufficient to bring suit?<sup>51</sup> What are the potential benefits and drawbacks to such an approach?

15. Could a deferred examination option be used for improper purposes, such as to obtain an official record for material that is non-copyrightable in an effort to harass or defraud others? If so, how might such abuses be prevented?

16. How, if at all, might a deferred examination option affect enforcement of a copyright by the U.S. Customs and Border Protection?<sup>52</sup>

#### D. Alternative Approaches

17. Could the same goals that a deferred examination option is meant to achieve be accomplished through alternative means, such as by amending the preregistration regime or the eligibility for statutory damages, or by reducing filing fees or adding new or expanded group registration options? Responses should discuss the potential benefits and drawbacks of any alternatives and why they may or may not be preferable.

#### E. Other Issues

18. Please identify any pertinent issues not referenced above that the Office should consider in conducting its study.

unpublished works, the Library is entitled, under regulations that the Register of Copyrights shall prescribe, to select any deposits for its collections.").

<sup>51</sup> See CVA Registration Modernization 2018 NOI Comments at 19 ("The Copyright Office should consider whether an application to finalize a provisional registration should be sufficient for filing a lawsuit.").

<sup>52</sup> U.S. Customs and Border Protection ("CBP") has the authority to detain, seize, forfeit, and ultimately destroy merchandise seeking entry into the United States if it bears an infringing copyright that has been registered with the Office, and has subsequently been recorded with CBP. U.S. Customs & Border Protection, *Intellectual Property Rights e-Recordation*, <https://iprr.cbp.gov/> (last visited Dec. 6, 2021). Congress has further required the CBP to implement a process by which it will "enforce a copyright for which the owner has submitted an application for registration under title 17 with the United States Copyright Office, to the same extent and in the same manner as if the copyright were registered with the Copyright Office." 19 U.S.C. 4343 (emphasis added).

Dated: December 6, 2021.

**Shira Perlmutter,**

*Register of Copyrights and Director of the U.S. Copyright Office.*

[FR Doc. 2021-26710 Filed 12-9-21; 8:45 am]

**BILLING CODE 1410-30-P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

#### Arts Advisory Panel Meetings

**AGENCY:** National Endowment for the Arts, National Foundation on the Arts and the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 7 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

**DATES:** See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

**ADDRESSES:** National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; [hales@arts.gov](mailto:hales@arts.gov), or call 202/682-5696.

**SUPPLEMENTARY INFORMATION:** The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

*Our Town (review of applications):* This meeting will be closed.

*Date and time:* January 12, 2022; 11:00 a.m. to 1:00 p.m.

*Our Town (review of applications):* This meeting will be closed.

*Date and time:* January 12, 2022; 2:30 p.m. to 4:30 p.m.

*National Heritage Fellowships (review of applications):* This meeting will be closed.

*Date and time:* January 13, 2022; 1:00 p.m. to 3:00 p.m.

*Our Town (review of applications):* This meeting will be closed.

*Date and time:* January 13, 2022; 11:00 a.m. to 1:00 p.m.

*Jazz Masters Tribute Concert (review of applications):* This meeting will be closed.

*Date and time:* February 3, 2022; 12:00 p.m. to 2:00 p.m.

*Jazz Masters Fellowships (review of applications):* This meeting will be closed.

*Date and time:* February 10, 2022; 2:00 p.m. to 3:00 p.m.

*Jazz Masters Fellowships (review of applications):* This meeting will be closed.

*Date and time:* February 10, 2022; 3:00 p.m. to 4:00 p.m.

Dated: December 7, 2021.

**Sherry P. Hale,**

*Staff Assistant, National Endowment for the Arts.*

[FR Doc. 2021-26742 Filed 12-9-21; 8:45 am]

**BILLING CODE 7537-01-P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request; Antarctic Emergency Response Plan and Environmental Protection Information

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

**DATES:** Written comments on this notice must be received by February 8, 2022 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292-7556; or send email to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Antarctic emergency response plan and environmental protection information.

*OMB Approval Number:* 3145–0180.

*Expiration Date of Approval:* July 31, 2022.

*Abstract:* The NSF, pursuant to the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*) (“ACA”) regulates certain non-governmental activities in Antarctica. The ACA was amended in 1996 by the Antarctic Science, Tourism, and Conservation Act. On September 7, 2001, NSF published a final rule in the **Federal Register** (66 FR 46739) implementing certain of these statutory amendments. The rule requires non-governmental Antarctic expeditions using non-U.S. flagged vessels to ensure that the vessel owner has an emergency response plan. The rule also requires persons organizing a non-governmental expedition to provide expedition members with information on their environmental protection obligations under the Antarctic Conservation Act.

*Expected Respondents:* Respondents may include non-profit organizations and small and large businesses. The majority of respondents are anticipated to be U.S. tour operators, currently estimated to number fifteen.

*Burden on the Public:* The Foundation estimates that a one-time paperwork and recordkeeping burden of 40 hours or less, at a cost of \$500 to \$1,400 per respondent, will result from the emergency response plan requirement contained in the rule. Presently, all respondents have been providing expedition members with a copy of the Guidance for Visitors to the Antarctic (prepared and adopted at the Eighteenth Antarctic Treaty Consultative Meeting as Recommendation XVIII–1). Because this Antarctic Treaty System document satisfies the environmental protection information requirements of the rule, no additional burden shall result from the environmental information requirements in the proposed rule.

Dated: December 7, 2021.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2021–26793 Filed 12–9–21; 8:45 am]

**BILLING CODE 7555–01–P**

**NUCLEAR REGULATORY COMMISSION**

[NRC–2021–0145]

**Information Collection: NRC Form 7, Application for NRC Export/Import License Amendment, Renewal, or Consent Request(s)**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 7, “Application for NRC Export/Import License Amendment, Renewal, or Consent Request(s).”

**DATES:** Submit comments by January 10, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov).

**SUPPLEMENTARY INFORMATION:****I. Obtaining Information and Submitting Comments***A. Obtaining Information*

Please refer to Docket ID NRC–2021–0145 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–2021–0145.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/>

*adams.html*. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML21266A320. The supporting statement is available in ADAMS under Accession No. ML21266A326.

- *NRC’s PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

- *NRC’s Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC’s Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov).

*B. Submitting Comments*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov/> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment

submissions available to the public or entering the comment into ADAMS.

## II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 7, "Application for NRC Export/Import License Amendment, Renewal, or Consent Request(s)." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 26, 2021 (86 FR 47661).

1. *The title of the information collection:* NRC Form 7, "Application for NRC Export/Import License Amendment, Renewal, or Consent Request(s)."

2. *OMB approval number:* 3150-0027.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 7.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Persons or businesses seeking an authorization to export or import nuclear equipment and material listed in Part 110 of title of the *Code of Federal Regulations*.

7. *The estimated number of annual responses:* 64.

8. *The estimated number of annual respondents:* 64.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 153.6.

10. *Abstract:* Persons in the U.S. wishing to export or import nuclear material or equipment, or byproduct material requiring a specific authorization, amend or renew a license, or wishing to request consent to export Category 1 quantities of byproduct material must file an NRC Form 7 application. The NRC Form 7 application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue an export, import, amendment or renewal license or notice of consent.

Dated: December 7, 2021.

For the Nuclear Regulatory Commission.  
**David C. Cullison**,  
*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2021-26767 Filed 12-9-21; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2021-0001]

### Sunshine Act Meetings

**TIME AND DATE:** Weeks of December 13, 20, 27, 2021, January 3, 10, 17, 2022.

**PLACE:** Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

**Week of December 13, 2021**

*Tuesday, December 14, 2021*

10 a.m. Briefing on Security Issues  
(Closed Ex. 1)

**Week of December 20, 2021—Tentative**

There are no meetings scheduled for the week of December 20, 2021.

**Week of December 27, 2021—Tentative**

There are no meetings scheduled for the week of December 27, 2021.

**Week of January 3, 2022—Tentative**

There are no meetings scheduled for the week of January 3, 2022.

**Week of January 10, 2022—Tentative**

There are no meetings scheduled for the week of January 10, 2022.

**Week of January 17, 2022—Tentative**

There are no meetings scheduled for the week of January 17, 2022.

**CONTACT PERSON FOR MORE INFORMATION:** For more information or to verify the status of meetings, contact Wesley Held at 301-287-3591 or via email at [Wesley.Held@nrc.gov](mailto:Wesley.Held@nrc.gov). The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., Braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301-287-0745, by videophone at

240-428-3217, or by email at [Anne.Silk@nrc.gov](mailto:Anne.Silk@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301-415-1969, or by email at [Tyesha.Bush@nrc.gov](mailto:Tyesha.Bush@nrc.gov) or [Betty.Thweatt@nrc.gov](mailto:Betty.Thweatt@nrc.gov).

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: December 8, 2021.

For the Nuclear Regulatory Commission.

**Wesley W. Held**,

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2021-26920 Filed 12-8-21; 4:15 pm]

**BILLING CODE 7590-01-P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022-29 and CP2022-32]

### 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:* December 14, 2021.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or

the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<sup>1</sup>

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

## II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2022–29 and CP2022–32; *Filing Title*: USPS Request to Add Priority Mail Contract 732 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: December 6, 2021; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: December 14, 2021.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**  
Secretary.

[FR Doc. 2021–26775 Filed 12–9–21; 8:45 am]

**BILLING CODE 7710–FW–P**

<sup>1</sup> See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Orbital Debris Research and Development Interagency Working Group Listening Sessions

**AGENCY:** Office of Science and Technology Policy (OSTP).

**ACTION:** Announcement of meeting.

**SUMMARY:** The White House Office of Science and Technology Policy (OSTP) is organizing a series of virtual listening sessions to hear about ideas, issues, and potential solutions related to the problem of orbital debris from members of the public who have an interest or stake in orbital debris research and development. Perspectives gathered during the virtual listening sessions will inform the National Science and Technology Council (NSTC) Orbital Debris Research and Development Interagency Working Group (ODRAD IWG) as it develops a government-wide orbital debris implementation plan, examining R&D activities as well as other considerations such as policy levers, international engagements, and other ideas outside of R&D solutions that may help build a cohesive implementation strategy. The implementation plan is a continuation of work done for the *National Orbital Debris Research and Development Plan (January 2021)*, which was a response to *Space Policy Directive—3 (June 2018)*, directing the United States to lead the management of traffic and mitigate the effects of debris in space.

#### DATES:

##### 1. *Orbital Debris Remediation:*

Thursday, December 16, 2021, 1:00 p.m. to 3:00 p.m. ET

##### 2. *Orbital Debris Mitigation:* Thursday, January 13, 2022, 1:00 p.m. to 3:00 p.m. ET

*Registration deadline:*

##### *Orbital Debris Remediation:*

Wednesday, December 15, 2021, 11:59 p.m. ET

##### *Orbital Debris Mitigation:* Wednesday, January 12, 2022, 11:59 p.m. ET

**ADDRESSES:** Register for a virtual listening session using the session-specific links below:

1. *Debris Remediation:* ZOOMLINK Registration [Will be included]
2. *Debris Mitigation:* ZOOMLINK Registration [Will be included]

**FOR FURTHER INFORMATION CONTACT:** Ezinne Uzo-Okoro at [OrbitalDebris@ostp.eop.gov](mailto:OrbitalDebris@ostp.eop.gov) or by calling 202–456–4444.

**SUPPLEMENTARY INFORMATION:** The Orbital Debris Interagency Working Group has commenced the development

of an implementation plan to be released in 2022. Pursuant to 42 U.S.C. 6622, OSTP is soliciting public input through these virtual listening sessions to obtain recommendations from a wide range of stakeholders, including representatives from diverse industries, academia, other relevant organizations and institutions, and the general public. The public input provided in response to these virtual listening sessions will inform OSTP and NSTC as they work with Federal agencies and other stakeholders to develop an Orbital Debris implementation plan. This implementation plan builds on the Orbital Debris R&D plan published in January 2021.

Each listening session will be organized around a particular theme and audience, described below:

1. *Session on Debris Remediation:* Thursday, December 16, 2021, 1:00 p.m. to 3:00 p.m. ET.

Debris remediation is the active or passive manipulation of debris objects to reduce or eliminate the risk they pose to operational space assets. This may include fully removing debris from orbit, moving debris from orbits that pose a high risk to operational spacecraft into lower-risk orbits, and finding ways to repurpose or recycle existing debris. Debris remediation activities could substantially reduce the risk of debris impact in key orbital regimes. R&D priorities include: Develop remediation and repurposing technologies and techniques for large-debris objects; Develop remediation technologies and techniques for small-debris objects; Develop models for risk and cost-benefit analyses. The target audience includes companies interested in developing debris remediation services as a line of business, any entity that has an interest in being a customer for debris remediation services, and researchers performing pre-competitive R&D that supports debris remediation capabilities.

Participants are encouraged to consider potential R&D, policy, regulatory, and international partnership actions when answering the following questions.

- What is the role of government, private sector, and academia?
- What can the Federal government do to incentivize the development of debris remediation capabilities in industry?
- What are the anticipated costs and development timelines for developing debris remediation services?

2. *Session on Debris Mitigation:* Thursday, January 13, 2022, 1:00 p.m. to 3:00 p.m. ET.

Limiting the creation of new debris through deliberate spacecraft and launch vehicle design choices may be the most cost-effective approach to managing new debris creation in orbit. Debris mitigation activities limit the creation of debris in key orbital regimes. Design choices could include improving the reliability of critical spacecraft subsystems, such as power and propulsion, improving passivation techniques, selecting spacecraft materials that can withstand impacts, enhanced shielding, and developing cost-effective solutions to improve maneuverability and end-of-life safe modes. We invite ideas for U.S. government actions to mitigate debris creation from the public including expert stakeholders in academia and industry. Actions could focus on buying down the risk and cost to implement new technologies to limit the creation of new debris, or even on incentives for implementing proven technologies for debris mitigation. Participants are encouraged to consider potential R&D, policy, regulatory, and international partnership actions when answering the following questions:

- What is the role of government, private sector, and academia in developing debris mitigation solutions?
- What specific actions, R&D or policy, could the government take to limit the creation of new debris on-orbit?
- What actions to limit debris creation are well understood, but require satellite or launch vehicle owners/operators to be educated or incentivized to implement?

Speakers will have 2 to 3 minutes each to make a comment. As many speakers will be accommodated as the scheduled time allows.

Staff from the IDA Science and Technology Policy Institute will facilitate the meeting, which will be recorded for use by the Interagency Working Group. Participation in a listening session will imply consent to capture participant's names, voices, and likenesses. Anything said may be recorded and transcribed for use by the Interagency Working Group and publicly released and attributed to specific participants. Moderators will manage the discussion and order of remarks.

Individuals unable to attend the listening sessions or who would like to provide more detailed information may submit written comments to the *Request for Comment (RFC) on the Orbital Debris Research and Development Plan* that was published in the **Federal**

**Register** [86 FR 61335, November 5, 2021]

Dated: December 7, 2021.

**Stacy Murphy,**

*Operations Manager.*

[FR Doc. 2021-26729 Filed 12-9-21; 8:45 am]

**BILLING CODE 3271-F1-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93722; File No. SR-NSCC-2021-015]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Remove Mutual Fund Deposit Requirements and Remove Certain Other Provisions Relating to Clearing Fund Requirements for Limited Members From the NSCC Rules

December 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 2, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and subparagraph (f)(4)<sup>4</sup> of Rule 19b-4 thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

(a) The proposed rule change of National Securities Clearing Corporation (“NSCC”) is annexed hereto as Exhibit 5 and consists of modifications to NSCC’s Rules & Procedures (the “Rules”)<sup>5</sup> to remove the requirement that Members and Mutual Fund/Insurance Services Members pay a Mutual Fund Deposit into the Clearing Fund relating to Mutual Fund Services, remove provisions relating to the Mutual Fund Deposit and the Insurance Deposit and remove a provision relating

to establishing a Clearing Fund requirement for NSCC Members<sup>6</sup> that currently do not have a Clearing Fund requirement. The proposed changes are described in greater detail below.

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) *Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

The proposed rule change consists of modifications the Rules to remove the requirement that Members and Mutual Fund/Insurance Services Members pay a Mutual Fund Deposit into the Clearing Fund relating to Mutual Fund Services, remove provisions relating to the Mutual Fund Deposit and the Insurance Deposit and remove a provision relating to establishing a Clearing Fund requirement for NSCC Members that currently do not have a Clearing Fund requirement. The proposed changes are described in greater detail below.

##### (i) Mutual Fund Deposit

As part of its market risk management strategy, NSCC manages its credit exposure to NSCC Members by determining the appropriate deposits to the Clearing Fund and monitoring Clearing Fund’s sufficiency, as provided for in the Rules.<sup>7</sup> The deposits to the Clearing Fund serves as each NSCC Member’s margin. The objective of an NSCC Member’s deposit is to mitigate potential losses to NSCC associated with a default by an NSCC Member. Pursuant to the Rules, each NSCC Member’s Clearing Fund deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as

<sup>6</sup> Members and Limited Members are collectively referred to herein as “NSCC Members”.

<sup>7</sup> See Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) (“Procedure XV”), *supra* note 5. NSCC’s market risk management strategy is designed to comply with Rule 17Ad-22(e)(4) under the Act, where these risks are referred to as “credit risks.” 17 CFR 240.17Ad-22(e)(4).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

<sup>5</sup> Capitalized terms not defined herein are defined in the Rules, available at [https://dtcc.com/~media/Files/Downloads/legal/rules/nsc\\_rules.pdf](https://dtcc.com/~media/Files/Downloads/legal/rules/nsc_rules.pdf).



identified within Procedure XV.<sup>8</sup> One of the required components is a “Mutual Fund Deposit” that is required to be paid by Mutual Fund/Insurance Services Members and Members that use Mutual Fund Services and which is intended to address risks relating to the use of Mutual Fund Services.<sup>9</sup>

Section 13 of Rule 4 requires that Mutual Fund/Insurance Services Members and Members that use Mutual Fund Services each make a cash deposit to the Clearing Fund, referred to as a Mutual Fund Deposit, in the amounts determined in Procedure XV.<sup>10</sup> Section I.(A)(4) of Procedure XV requires that each Member that uses Mutual Fund Services pay a Mutual Fund Deposit ranging from \$5,000 to \$20,000 based on the amount of Mutual Fund Services settlement debits such Member has with respect to any one Fund Member.<sup>11</sup> Section I.(C) of Procedure XV requires that each Mutual Fund/Insurance Services Member also pay a Mutual Fund Deposit ranging from \$5,000 to \$20,000 based on the amount of Mutual Fund Services settlement debits such Mutual Fund/Insurance Services Member has with respect to any one Fund Member.<sup>12</sup>

The risk that the Mutual Fund Deposit is intended to address is a loss incurred by NSCC relating to a default by a Member or Mutual Fund/Insurance Services Member using Mutual Fund Services. Mutual Fund Services is a “non-guaranteed” service of NSCC, which means that NSCC does not guarantee the payments at settlement for transactions processed through Mutual Fund Services.<sup>13</sup> In the event of an NSCC Member default, transactions processed through Mutual Fund Services by that NSCC Member may be reversed, including any credits owed to any counterparties with respect to such transactions.<sup>14</sup> Therefore, a loss to NSCC could only occur with respect to transactions in Mutual Fund Services if an NSCC Member defaults on payment, NSCC makes a decision to proceed with settlement despite the default and pay the credits to the counterparties and then subsequently NSCC is unable to recover the funds from either the defaulting NSCC Member or the counterparties. Such a situation is referred to as a “double default”. NSCC put the Mutual Fund Deposit requirement in place to address the

remote risk of loss related to a double default in connection with Mutual Fund Services transactions.<sup>15</sup>

NSCC regularly assesses its margining methodologies to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market. In connection with such reviews, NSCC has determined that the Mutual Fund Deposit is not necessary to address the risks relating to transactions in Mutual Fund Services by Members and Mutual Fund/Insurance Services Members. The risk of an NSCC loss relating to Mutual Fund Services transactions is remote. As discussed above, upon a default by a Member or a Mutual Fund/Insurance Services Member related to Mutual Fund Services transactions, for NSCC to incur a loss, NSCC would need to make a decision to not reverse the Mutual Fund Services transactions and pay the credits to the counterparties. While it is possible that NSCC could make such a decision, for instance in order to minimize operational risks and market impacts, it would likely only do so if it was certain that it could recover the amounts of the credits it decided to pay. In addition, since those payments can be reversed, once those payments were made, NSCC could look to both the defaulting NSCC Member and the counterparties that received the credit payments to recover those losses. NSCC has never needed to use Mutual Fund Deposits to recover a loss and has never incurred a loss relating to an NSCC Member defaulting on Mutual Fund Services transaction payments.

In addition, the amounts of the Mutual Fund Deposits no longer correlate with most of the settlement amounts in Mutual Fund Services. The current requirements for the Mutual Fund Deposits, from \$5,000 to \$20,000, has not changed since the Mutual Fund Deposit was implemented in 1988.<sup>16</sup> In the remote circumstance where NSCC did incur a loss relating to Mutual Fund Services, the amounts of the Mutual Fund Deposits would not likely cover the amount of such losses.

Therefore, NSCC is proposing to remove the requirement that Members that use Mutual Fund Services and Mutual Fund/Insurance Services Members pay the Mutual Fund Deposit.

(ii) Mutual Fund Deposit/Insurance Deposit Provisions

In addition to the provisions requiring Members and Mutual Fund/Insurance

Services to pay a Mutual Fund Deposit, Section 13 of Rule 4 contains provisions stating that Fund Members *may* be required to make a Mutual Fund Deposit in accordance with Procedure XV and other applicable Rules and Procedures.<sup>17</sup> Section 14 of Rule 4 has a similar provision stating that Insurance Participants *may* be required to pay an Insurance Deposit in accordance with Procedure XV and other applicable Rules and Procedures.<sup>18</sup>

Section 13 of Rule 4 and Section 14 of Rule 4 also contain other provisions relating to the use of the Mutual Fund Deposits and Insurance Deposits, including loss allocation provisions relating to the Mutual Fund Deposits and Insurance Deposits and provisions relating to the return of the Mutual Fund Deposit or Insurance Deposit to a Mutual Fund Participant or Insurance Participant, respectively, that withdraws from membership.

NSCC has never placed a requirement in Procedure XV for Fund Members to pay a Mutual Fund Deposit or for Insurance Participants to pay an Insurance Deposit. Section I.(D) of Procedure XV states that the Clearing Fund Formula for each Fund Member, Insurance Carrier/Retirement Services Member and those Mutual Fund/Insurance Services Members who use Insurance & Retirement Services shall be established at such time as NSCC deems appropriate, however, NSCC has never established a Clearing Fund Formula for such NSCC Members.<sup>19</sup> In addition, NSCC currently does not plan to establish a Clearing Fund Formula for such NSCC Members.

NSCC believes that the provisions relating to whether it may require an NSCC Member to pay a Mutual Fund Deposit or Insurance Deposit and that it shall establish a Clearing Fund Formula for Fund Members, Insurance Carrier/Retirement Services Members and Mutual Fund/Insurance Services Members who use Insurance & Retirement Services are unnecessary and may be misleading since NSCC currently has no plans to establish such requirements. Given that NSCC would no longer be requiring Members and Mutual Fund/Insurance Services Members to pay a Mutual Fund Deposit and to avoid confusion relating to whether any other NSCC Members would be required to pay a Mutual Fund Deposit or an Insurance Deposit, NSCC is proposing to delete the provisions

<sup>8</sup> Procedure XV, *supra* note 5.

<sup>9</sup> See Section 13 of Rule 4, *supra* note 5.

<sup>10</sup> *Id.*

<sup>11</sup> Section I.(A)(4) of Procedure XV, *supra* note 5.

<sup>12</sup> Section I.(C) of Procedure XV, *supra* note 5.

<sup>13</sup> See Addendum D of the Rules, *supra* note 5.

<sup>14</sup> *Id.*

<sup>15</sup> See Securities Exchange Release No. 26377 (December 20, 1988) (SR-NSCC-87-12), 53 FR 52546 (December 28, 1988).

<sup>16</sup> *Id.*

<sup>17</sup> Section 13 of Rule 4, *supra* note 5.

<sup>18</sup> Section 14 of Rule 4, *supra* note 5.

<sup>19</sup> See Section I.(D) of Procedure XV, *supra* note 5.

relating to Mutual Fund Deposits, Insurance Deposits and statements relating to whether NSCC shall establish a Clearing Fund Formula for Fund Members, Insurance Carrier/Retirement Services Members and Mutual Fund/Insurance Services Members who use Insurance & Retirement Services.

(ii) Proposed Rule Changes

NSCC is proposing to delete the definitions of Insurance Deposit and Mutual Fund Deposit in Rule 1 and delete Sections 13 and 14 of Rule 4 to remove the provisions relating to Mutual Fund Deposits and Insurance Deposits. NSCC is also proposing to delete Section I.(A)(4) of Procedure XV to remove the requirement that Members that use Mutual Fund Services pay a Mutual Fund Deposit and delete Section I.(C) of Procedure XV to remove the requirement that Mutual Fund/Insurance Services Members pay a Mutual Fund Deposit. NSCC would also delete Section I.(D) of Procedure XV to remove the statement that NSCC shall establish a Clearing Fund Formula for Fund Members, Insurance Carrier/Retirement Services Members and those Mutual Fund/Insurance Services Members who use Insurance & Retirement Services.

(iii) Implementation

NSCC expects to implement the proposed rule changes on or prior to January 31, 2022. As proposed, a legend would be added to Rule 1, Rule 4 and Procedure XV stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legends would also state the date by which such changes would be implemented, the file number of this proposal, that NSCC will issue an Important Notice when the changes are implemented, and would state that once this proposal is implemented the legend would automatically be removed.

2. Statutory Basis

NSCC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act<sup>20</sup> and Rule 17Ad22(e)(6)(i) under the Act.

Section 17A(b)(3)(F) of the Act<sup>21</sup> requires, in part, that the Rules be designed to, among other things, remove impediments to and perfect the

mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The proposed revisions are consistent with this provision because the proposed revisions would remove a requirement to pay the Mutual Fund Deposit that NSCC has determined is not necessary to mitigate potential losses to NSCC associated with a default by an NSCC Member related to transactions in Mutual Fund Services. Removing the requirement of the Mutual Fund Deposits would allow Members and Mutual Fund/Insurance Services Members to use Mutual Fund Services without having to incur costs associated with making a Mutual Fund Deposit.

In addition, removing the references to the Mutual Fund Deposit and the Insurance Deposit and the references to establishing a Clearing Fund Formula for Fund Members, Insurance Carrier/Retirement Services Members and Mutual Fund/Insurance Services Members who use Insurance & Retirement Services would enhance the clarity of the Rules by removing provisions that are unnecessary and potentially misleading. Having clear and accurate Rules would help NSCC Members to better understand their rights and obligations regarding NSCC's services.

As such, NSCC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.<sup>22</sup>

Rule 17Ad–22(e)(6)(i) under the Act<sup>23</sup> requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.<sup>24</sup> NSCC has determined that the Mutual Fund Deposit is not necessary to address the risks relating to transactions in Mutual Fund Services by Members and Mutual Fund/Insurance Services Members. NSCC has never incurred a loss resulting from a default by an NSCC Member relating to transactions in Mutual Fund Services. In addition, for the reasons discussed above, the risk of NSCC occurring such a loss is remote and the amounts of the Mutual Fund Deposits are likely not sufficient to cover any such loss if such an unlikely event were to occur. Therefore, NSCC believes the proposed change is

consistent with Rule 17Ad–22(e)(6)(i) under the Act.<sup>25</sup>

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed changes would have an adverse impact, or impose a burden, on competition. These proposed changes would remove a requirement to pay the Mutual Fund Deposit for Mutual Fund/Insurance Services Members and Members that use Mutual Fund Services and would be removing provisions relating to the Mutual Fund Deposit and Insurance Deposit and clearing fund that NSCC believes are not necessary. The proposed changes would not be adding any obligations on NSCC Members that are using NSCC's services. As such, the proposed changes would not impede any NSCC Members from engaging in the services or have an adverse impact on any NSCC Members. Moreover, the proposed changes may promote competition because the proposed changes could enhance participation in Mutual Fund Services by removing the obligation to pay a Mutual Fund Deposit.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202–551–5777.

<sup>22</sup> *Id.*

<sup>23</sup> 17 CFR 240.17Ad–22(e)(6)(i).

<sup>24</sup> *Id.*

<sup>25</sup> 17 CFR 240.17Ad–22(e)(6)(iii).

<sup>20</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>21</sup> *Id.*

NSCC reserves the right not to respond to any comments received.

### III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>26</sup> of the Act and paragraph (f)<sup>27</sup> of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2021-015 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2021-015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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 NSCC and on DTCC's website (<https://dtcc.com/legal/sec-rule-filings.aspx>). 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-NSCC-2021-015 and should be submitted on or before January 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**J. Matthew DeLesDernier**,  
Assistant Secretary.

[FR Doc. 2021-26714 Filed 12-9-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93718; File No. SR-CboeEDGX-2021-050]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

December 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 1, 2021, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX" or "EDGX Equities") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/))

[sic], at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGX Equities") to (1) add a new Growth Tier 4, and (2) modify the Remove Volume Tier 1, effective December 1, 2021.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,<sup>3</sup> no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a "Maker-Taker" model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>27</sup> 17 CFR 240.19b-4(f).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (November 29, 2021), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of total dollar value for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Under footnote 1 of the Fee Schedule the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers three Growth Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,<sup>4</sup> V,<sup>5</sup> Y,<sup>6</sup> 3<sup>7</sup> and 4,<sup>8</sup> where a Member reaches certain add volume-based criteria, including "growing" its volume over a certain baseline month. Currently, the Growth Tiers are as follows:

- Growth Tier 1 provides a rebate of \$0.0026 per share to qualifying orders (*i.e.*, orders yielding fee codes B, V, Y, 3, or 4) where (1) the Member adds an ADV<sup>9</sup> equal to or greater than 0.20% of the TCV;<sup>10</sup> and (2) the Member has a Step-Up Add TCV<sup>11</sup> from August 2021 equal to or greater than 0.10% of [sic] the Member adds a Step-Up ADAV<sup>12</sup>

<sup>4</sup> Orders yielding Fee Code "B" are orders adding liquidity to EDGX (Tape B).

<sup>5</sup> Orders yielding Fee Code "V" are orders adding liquidity to EDGX (Tape A).

<sup>6</sup> Orders yielding Fee Code "Y" are orders adding liquidity to EDGX (Tape C).

<sup>7</sup> Orders yielding Fee Code "3" are orders adding liquidity to EDGX in the pre and post market (Tapes A or C).

<sup>8</sup> Orders yielding Fee Code "4" are orders adding liquidity to EDGX in the pre and post market (Tape B).

<sup>9</sup> "ADAV" means average daily added volume calculated as the number of shares added per day and "ADV" means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADAV and ADV is calculated on a monthly basis.

<sup>10</sup> "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

<sup>11</sup> "Step-Up Add TCV" means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

<sup>12</sup> "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

from August 2021 equal to or greater than 8 million shares.

- Growth Tier 2 provides a rebate of \$0.0027 per share to qualifying orders (*i.e.*, orders yielding fee codes B, V, Y, 3, or 4) where (1) the Member adds a Step-Up ADAV from June 2021 equal to or greater than 0.10% of the TCV or the Member adds a Step-Up ADAV from June 2021 equal to or greater than 8 million; and (2) the Member has a total remove ADV equal to or greater than 0.70% of TCV.

- Growth Tier 3 provides a rebate of \$0.0030 per share to qualifying orders (*i.e.*, orders yielding fee codes B, V, Y, 3, or 4) where (1) the Member has a Step-Up Add TCV from January 2021 equal to or greater than 0.10%; (2) the Member adds an ADV equal to or greater than 0.50% of the TCV; and (3) the Member removes an ADV equal to or greater than 0.75% of the TCV.

Now, the Exchange proposes to add Growth Tier 4 as follows:

- Proposed Growth Tier 4 provides a rebate of \$0.0034 per share to qualifying orders (*i.e.*, orders yielding fee codes B, V, Y, 3, or 4) where (1) the Member adds a Step-Up ADAV from October 2021 equal to or greater than 0.10% of the TCV or the Member adds a Step-Up ADAV from October 2021 equal to or greater than 10 million shares; and (2) the Member has a total remove ADV equal to or greater than 0.60% of TCV.

Under footnote 1 of the Fee Schedule the Exchange also currently offers two Remove Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes BB,<sup>13</sup> N,<sup>14</sup> and W<sup>15</sup> where a Member reaches certain remove volume-based criteria. Currently, the Remove Volume Tiers are as follows:

- Remove Volume Tier 1 provides a reduced fee of \$0.00275 per share in securities at or above \$1.00 and 0.28% of total dollar value in securities priced below \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes BB, NN, or W) where (1) the Member adds a Step-Up ADAV from June 2021 equal to or greater than 0.10% of the TCV or the Member adds a Step-Up ADAV from June 2021 equal to or greater than 8 million shares; and (2) the Member has a total remove ADV equal to or greater than 0.70% of the TCV.

- Remove Volume Tier 2 provides a reduced fee of \$0.00275 per share in securities at or above \$1.00 and 0.28% of total dollar value in securities priced

<sup>13</sup> Orders yielding Fee Code "BB" are orders removing liquidity from EDGX (Tape B).

<sup>14</sup> Orders yielding Fee Code "N" are orders removing liquidity from EDGX (Tape C).

<sup>15</sup> Orders yielding Fee Code "W" are orders removing liquidity from EDGX (Tape A).

below \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes BB, NN, or W) where (1) the Member has an ADAV equal to or greater than 0.25% of TCV with displayed orders that yield fee codes B, V or Y; or (2) the Member adds Retail Order ADV (*i.e.*, yielding fee code ZA) equal to or greater than 0.45% of the TCV.

Now, the Exchange proposes to modify Remove Volume Tier 1 as follows:

- Proposed Remove Volume Tier 1 provides a reduced fee of \$0.00275 per share in securities at or above \$1.00 and 0.28% of total dollar value in securities priced below \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes BB, NN, or W) where (1) the Member adds a Step-Up ADAV from June 2021 equal to or greater than 0.10% of the TCV or the Member adds a Step-Up ADAV from June 2021 equal to or greater than 8 million shares; and (2) the Member has a total remove ADV equal to or greater than 0.60% (instead of 0.70%) of the TCV.

The proposed amendment to the Remove Volume Tier 1 would lessen the difficulty of the existing criteria while keeping the reduced fee the same.

Overall, the proposed new Growth Tier and the amendments to the Remove Volume Tier are designed to provide Members with an opportunity to receive an enhanced rebate or reduced fee by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Incentivizing an increase in liquidity adding or removing volume, through enhanced rebate or reduced fee opportunities, encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and liquidity executing Members on the Exchange to increase transactions and take execution opportunities provided by such increased liquidity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>17</sup> in particular, as it is designed to provide for the equitable

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(4).

allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>18</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,<sup>19</sup> including the Exchange,<sup>20</sup> and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes the proposed Growth Tier 4 and the proposed change to the Remove Volume Tier 1 are reasonable because the Tiers will be available to all Members and

provide all Members with an additional opportunity to receive an enhanced rebate or reduced fee. The Exchange further believes the proposed Growth Tier 4 will provide a reasonable means to encourage overall growth in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate on qualifying orders. Similarly, the Exchange believes the Remove Volume Tier 1, even as amended, will provide a reasonable means to encourage overall growth in Members' order flow to the Exchange and to incentivize Members to continue to add and remove liquidity on the Exchange by offering them an additional opportunity to receive a reduced fee on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

Further, the Exchange believes that the proposed changes are reasonable as it does not represent a significant departure from the criteria currently offered in the Fee Schedule. For example, the Exchange notes similar criteria is offered under the existing Growth Tiers and the change to the Remove Volume Tier 1 slightly lessens the difficulty of achieving the Tier. Additionally, the Exchange believes that the proposed enhanced rebate under Growth Tier 4 and reduced fee under the Remove Volume Tier 1, which is not being changed, continues to be commensurate with the new criteria.

The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for Growth Tier 4 and will continue to be eligible for the Remove Volume Tier 1 and have the opportunity to meet each Tier's criteria and receive the corresponding enhanced rebate or reduced fee if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for Growth Tier 4 or the Remove Volume Tier 1, as amended. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under each proposed tier. The Exchange also notes that proposed changes will

not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to the Remove Volume Tier 1 and the proposed Growth Tier 4 apply to all Members equally in that all Members are eligible for each of the Tiers, have a reasonable opportunity to meet the Tiers' criteria and will receive the enhanced rebate or reduced fee on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by adding a new pricing incentive and amending an existing pricing incentive in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in

<sup>18</sup> 15 U.S.C. 78f.(b)(5).

<sup>19</sup> See BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

<sup>20</sup> See EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.<sup>21</sup> Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>22</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>23</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>24</sup> and paragraph (f) of Rule 19b-4<sup>25</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2021-050 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeEDGX-2021-050. 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-CboeEDGX-2021-050 and should be submitted on or before January 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**J. Matthew DeLesDernier**,  
Assistant Secretary.

[FR Doc. 2021-26711 Filed 12-9-21; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**Sunshine Act Meeting**

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 15, 2021 at 10:00 a.m.

**PLACE:** The meeting will be webcast on the Commission’s website at [www.sec.gov](http://www.sec.gov).

**STATUS:** This meeting will begin at 10 a.m. (ET) and will be open to the public via webcast on the Commission’s website at [www.sec.gov](http://www.sec.gov).

**MATTERS TO BE CONSIDERED:**

1. The Commission will consider whether to approve the 2022 Final Budget and Accounting Support Fee for the Public Company Accounting Oversight Board.

2. The Commission will consider whether to re-propose a rule prohibiting fraud, manipulation, or deception in connection with security-based swaps, as well as whether to propose new rules

<sup>21</sup> *Supra* note 3.

<sup>22</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>23</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

prohibiting undue influence over the Chief Compliance Officers of security-based swap dealers and major security-based swap participants and requiring reporting of large security-based swap positions.

3. The Commission will consider whether to propose amendments to certain rules that govern money market funds under the Investment Company Act of 1940.

4. The Commission will consider whether to propose amendments to modernize share repurchase disclosure, including more detailed and more frequent disclosure about issuer share repurchases and requiring issuers to present the disclosure using a structured data language.

5. The Commission will consider whether to propose amendments to Rule 10b5-1 and new disclosure regarding 10b5-1 trading arrangements and insider trading policies and procedures, as well as amendments regarding the disclosure of the timing of certain equity compensation awards and reporting of gifts on Form 4.

**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: December 8, 2021.

**Vanessa A. Countryman,**  
*Secretary.*

[FR Doc. 2021-26945 Filed 12-9-21; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93720; File No. SR-NYSEArca-2021-73]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Franklin Responsibly Sourced Gold ETF Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)

December 6, 2021.

#### I. Introduction

On August 23, 2021, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4

thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Franklin Responsibly Sourced Gold ETF (“Fund”), a series of the Franklin Templeton Holdings Trust (“Trust”), under NYSE Arca Rule 8.201-E. The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.<sup>3</sup> On September 29, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> The Commission has received no comments on the proposed rule change. The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposed Rule Change<sup>7</sup>

The Exchange proposes to list and trade Shares of the Fund<sup>8</sup> under NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity-Based Trust Shares<sup>9</sup> on the Exchange. The Sponsor of the Fund is Franklin Holdings, LLC, a Delaware limited liability company. BNY Mellon Asset Servicing, a division of The Bank of New York Mellon (“BNYM”), serves as the Fund’s administrator (“Administrator”) and transfer agent (the “Transfer Agent”). Delaware Trust

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 92840 (September 1, 2021), 86 FR 50385 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 93179, 86 FR 55033 (October 5, 2021). The Commission designated December 7, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> Additional information regarding the Fund, the Trust and the Shares, including investment strategies, creation and redemption procedures, and portfolio holdings can be found in the Notice, *supra* note 3.

<sup>8</sup> On April 22, 2021, the Trust submitted to the Commission on a confidential basis its draft registration statement on Form S-1 under the Securities Act of 1933 (“Registration Statement”). The Registration Statement is not yet effective, and the Exchange will not commence trading in Shares until the Registration Statement becomes effective.

<sup>9</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. The Exchange represents that the Shares will satisfy the requirements of NYSE Arca Rule 8.201-E and thereby qualify for listing on the Exchange and that the Trust relies on the exemption contained in Rule 10A-3(c)(7) regarding the application of Rule 10A-3 (17 CFR 240.10A-3) under the Act.

Company, a subsidiary of the Corporation Service Company serves as trustee of the Trust (“Trustee”). J.P. Morgan Chase Bank, N.A., London branch is the custodian of the Fund’s Gold Bullion (as defined in the Registration Statement) (the “Gold Custodian”).<sup>10</sup> BNYM will serve as the custodian of the Fund’s cash, if any (the “Cash Custodian”).

#### *Exchange’s Description of the Operation of the Trust and Fund*

The investment objective of the Fund will be for the Shares to reflect the performance of the price of gold bullion, less the expenses of the Fund’s operations. Shares of the Fund will represent units of fractional undivided beneficial interest in and ownership of the net assets of the Fund.

The Fund seeks to predominantly hold responsibly sourced gold bullion, defined as London Good Delivery gold bullion bars produced after January 2012 in accordance with London Bullion Market Association’s (“LBMA”) Responsible Gold Guidance (the “Guidance”). From time to time, in certain circumstances a portion of the Fund’s assets may include pre-2012 LBMA gold bullion (*i.e.*, London Good Delivery gold bars produced prior to January 2012 which was not subject to the Guidance), including, for example, due to availability constraints. In those circumstances, the Gold Custodian will seek to replace any pre-2012 LBMA gold bullion in the Fund Allocated Account with LBMA good delivery bars produced after January 2012 as soon as is practicable.

<sup>10</sup> The Gold Custodian is responsible for safekeeping the Fund’s gold pursuant to the Allocated Gold Account Agreement and the Unallocated Gold Account Agreement. The Gold Custodian will facilitate the transfer of gold in and out of the Fund through (i) the unallocated gold accounts it may maintain for each Authorized Participant (as defined below) or unallocated gold accounts that may be maintained for an Authorized Participant by another London Precious Metals Clearing Limited clearing bank, and (ii) the unallocated and allocated gold accounts it will maintain for the Fund. The Gold Custodian is responsible for allocating specific bars of gold to the Fund Allocated Account. As used herein, “Fund Allocated Account” means the allocated gold account of the Trust established with the Gold Custodian on behalf of the Fund by the Allocated Gold Account Agreement, to be used to hold gold that is transferred from the Fund Unallocated Account to be held by the Fund in allocated form; the “Fund Unallocated Account” means the unallocated gold account of the Trust established with the Gold Custodian on behalf of the Fund by the Unallocated Gold Account Agreement, to be used to facilitate the transfer of gold in and out of the Fund. The Gold Custodian will provide the Fund with regular reports detailing the gold transfers into and out of the Fund Unallocated Account and the Fund Allocated Account and identifying the gold bars held in the Fund Allocated Account.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

The Guidance is a mandatory governance framework for the responsible sourcing of gold applicable to LBMA approved good delivery refiners that is designed to promote the integrity of the global supply chain for the wholesale gold markets. Among other things, the Guidance includes measures to address environmental issues, avoid materials from conflict-afflicted areas, and combat money laundering, financing of terrorism, and human rights abuses, including child labor. The Guidance requires each LBMA good delivery refinery to undergo a comprehensive audit, at least annually, in order to confirm compliance with the LBMA's minimum requirements related to the responsible sourcing of gold and to publicly report results (audits are made available on the LBMA website). The audits, among other aspects, focus on the refiner's management systems and controls, and whether they are robust and appropriate to addressing the refiner's risk profile. Additional information regarding the LBMA's efforts to promote ethical sourcing of gold and a copy of the current version of the Guidance is available at <https://www.lbma.org.uk/responsible-sourcing>.

The Fund will not trade in gold futures, options, or swap contracts on any futures exchange or over-the-counter ("OTC"). The Fund will not hold or trade in commodity futures contracts, "commodity interests," or any other instruments regulated by the Commodity Exchange Act. The Fund's Cash Custodian may hold cash proceeds from gold sales and other cash received by the Fund.

The Shares are intended to constitute a simple and cost-efficient means of gaining investment benefits similar to those of holding gold bullion directly, by providing investors an opportunity to participate in the responsibly sourced gold market through an investment in the Shares, instead of the traditional means of purchasing, storing and insuring gold.

#### *Operation of the Gold Market*

The global gold trading market consists of OTC transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options.

The OTC gold market includes spot, forward, and option and other derivative transactions conducted on a principal-to-principal basis. While this is a global, nearly 24-hour per day market, its main centers are London, New York, and Zurich.

According to the Registration Statement, most OTC market trades are

cleared through London. The LBMA plays an important role in setting OTC gold trading industry standards. A London Good Delivery Bar (as described below), which is acceptable for delivery in settlement of any OTC transaction, will be acceptable for delivery to the Fund, as discussed below.

The most significant gold futures exchange is COMEX, operated by Commodities Exchange, Inc., a subsidiary of New York Mercantile Exchange, Inc., and a subsidiary of the Chicago Mercantile Exchange Group (the "CME Group"). Other commodity exchanges include the Tokyo Commodity Exchange ("TOCOM"), the Multi Commodity Exchange of India ("MCX"), the Shanghai Futures Exchange, the Shanghai Gold Exchange, ICE Futures US (the "ICE"), and the Dubai Gold & Commodities Exchange. The CME Group and ICE are members of the Intermarket Surveillance Group ("ISG").

#### *The London Gold Bullion Market*

According to the Registration Statement, most trading in physical gold is conducted on the OTC market and is predominantly cleared through London. In addition to coordinating market activities, the LBMA acts as the principal point of contact between the market and its regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the "London Good Delivery Lists," which are the lists of LBMA accredited melters and assayers of gold. The LBMA also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.

The term "loco London" refers to gold bars physically held in London that meet the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of an LBMA acceptable refiner), and appearance set forth in the good delivery rules promulgated by the LBMA from time to time. Gold bars meeting these requirements are known as "London Good Delivery Bars."

The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams = 32.1507465 troy ounces and 1 troy ounce = 31.1034768 grams. A London Good Delivery Bar is acceptable for delivery in settlement of a transaction on the OTC market. Typically referred to as 400-ounce bars, a London Good Delivery Bar must contain between 350 and 430 fine troy ounces of gold, with a minimum fineness (or purity) of 995 parts per 1,000 (99.5%), be of good appearance and be easy to handle and stack. The

fine gold content of a gold bar is calculated by multiplying the gross weight of the bar (expressed in units of 0.025 troy ounces) by the fineness of the bar.

#### *Creation and Redemption of Shares*

According to the Registration Statement, the Fund will create and redeem Shares on a continuous basis in one or more Creation Units. A Creation Unit equals a block of 50,000 Shares. The Fund will issue Shares in Creation Units to certain authorized participants ("Authorized Participants") on an ongoing basis. Each Authorized Participant must be a registered broker-dealer or other securities market participant such as a bank or other financial institution which is not required to register as a broker-dealer to engage in securities transactions, a participant in The Depository Trust Company ("DTC"), and have entered into an agreement with the Administrator (the "Participant Agreement"), and has established an unallocated gold account with the Gold Custodian or another London Precious Metals Clearing Limited clearing bank.

Creation Units may be created or redeemed only by Authorized Participants. The creation and redemption of Creation Units is only made in exchange for the delivery to the Fund or the distribution by the Fund of the amount of gold represented by the Creation Units being created or redeemed. The amount of gold required to be delivered to the Fund in connection with any creation, or paid out upon redemption, is based on the combined NAV of the number of Shares included in the Creation Units being created or redeemed as determined on the day the order to create or redeem Creation Units is properly received and accepted. Orders must be placed by 3:59:59 p.m. New York time. The day on which the Administrator receives a valid purchase or redemption order is the order date. Creation Units may only be issued or redeemed on a day that the Exchange is open for regular trading.

According to the Registration Statement, the total deposit required to create each Creation Unit, or a Creation Unit Gold Delivery Amount, is an amount of gold and cash, if any, that is in the same proportion to the total assets of the Fund (net of estimated accrued expenses and other liabilities) on the date the order to purchase is properly received as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. An Authorized Participant who places a purchase order is



responsible for transferring the Creation Unit Gold Delivery Amount to the Fund Unallocated Account. Upon receipt, the Administrator will direct DTC to credit the number of Creation Units ordered to the Authorized Participant's DTC account. The Gold Custodian will transfer the Creation Unit Gold Delivery Amount from the Fund Unallocated Account to the Fund Allocated Account by allocating to the Fund Allocated Account specific bars of gold which the Gold Custodian holds, or instructing a sub-custodian to allocate specific bars of gold held by or for the sub-custodian.

The redemption distribution from the Fund consists of a credit to the redeeming Authorized Participant's unallocated account in the amount of the Creation Unit Gold Delivery Amount. The Creation Unit Gold Delivery Amount for redemptions is the number of ounces of gold held by the Fund to be paid out upon redemption of a Creation Unit. The Gold Custodian will transfer the redemption amount from the Fund Allocated Account to the Fund Unallocated Account and, thereafter, to the redeeming Authorized Participant's unallocated account.

#### *Net Asset Value*

To determine the Fund's NAV, the Administrator will value the gold held by the Fund on the basis of the LBMA Gold Price PM, as published by the ICE Benchmark Administration Limited (the "IBA"). IBA operates electronic auctions for spot, unallocated loco London gold, providing a market-based platform for buyers and sellers to trade. The auctions are run at 10:30 a.m. and 3:00 p.m. London time for gold. The final auction prices are published to the market as the LBMA Gold Price AM and the LBMA Gold Price PM, respectively.

The Administrator will calculate the NAV on each day the Exchange is open for regular trading, at the earlier LBMA Gold Price PM for the day or 12:00 p.m. New York time. If no LBMA Gold Price (AM or PM) is made on a particular evaluation day or if the LBMA Gold Price PM has not been announced by 12:00 p.m. New York time on a particular evaluation day, the next most recent LBMA Gold Price AM or PM will be used in the determination of the NAV, unless the Sponsor determines that such price is inappropriate to use as the basis for such determination.

Once the value of the gold has been determined, the Administrator will subtract all estimated accrued expenses and other liabilities of the Fund from the total value of the gold and all other assets of the Fund. The resulting figure is the NAV. The Administrator will determine the NAV per Share by

dividing the NAV of the Fund by the number of Shares outstanding as of the close of trading on the Exchange.

#### *Availability of Information Regarding Gold*

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity such as gold over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services.

Investors may obtain gold pricing information on a 24-hour basis based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg.

Reuters and Bloomberg, for example, provide at no charge on their websites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk).

#### *Availability of Information*

The intraday indicative value ("IIV") per Share for the Shares will be disseminated by one or more major market data vendors. The IIV will be calculated based on the amount of gold held by the Fund and a price of gold derived from updated bids and offers indicative of the spot price of gold.<sup>11</sup>

The Fund's website will contain the following information, on a per Share basis: (a) The Official Closing Price<sup>12</sup>

<sup>11</sup> The IIV on a per Share basis disseminated during the Exchange's Core Trading Session, as defined in NYSE Arca Rule 7.34-E, should not be viewed as a real-time update of the NAV, which is calculated once a day.

<sup>12</sup> The term "Official Closing Price" is defined in NYSE Arca Rule 1.1(II) as the reference price to determine the closing price in a security for purposes of Rule 7-E Equities Trading, and the

and a calculation of the premium or discount of such Official Closing Price against the Fund's NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website for the Fund will also provide its prospectus. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

#### *Criteria for Initial and Continued Listing*

The Fund will be subject to the criteria in NYSE Arca Rule 8.201-E(e) for initial and continued listing of the Shares.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading, which is equivalent to 1,384 fine ounces of gold or approximately \$2,500,000 as of July 22, 2021. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

#### *Trading Rules*

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Rule 7.34-E(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for order entry is \$0.0001.

Further, NYSE Arca Rule 8.201-E sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, any related futures or options on futures, or any other related derivatives.

procedures for determining the Official Closing Price are set forth in that rule.

Commentary .04 of NYSE Arca Rule 11.3–E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>13</sup> The Exchange will halt trading in the Shares if the NAV of the Fund is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

#### *Surveillance*

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances

administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority Inc. ("FINRA"), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>14</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>15</sup>

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the improper distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in

this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The Trust has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

#### *Information Bulletin*

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses as will be described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory

<sup>14</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>15</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>13</sup> See NYSE Arca Rule 7.12–E.

jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

### III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2021–73 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>16</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>17</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”<sup>18</sup>

Under the Commission's Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”<sup>19</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>20</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent

with the Act and the applicable rules and regulations.<sup>21</sup>

The Commission is concerned that certain aspects of the proposal are not sufficiently described and that the Exchange has not met its burden to demonstrate that the proposed rule change is consistent with the Act and the rules and regulations issued thereunder. For example, with respect to creation and redemption of Shares, the Exchange states that the Gold Custodian will transfer the Creation Unit Gold Delivery Amount from the Fund Unallocated Account to the Fund Allocated Account by allocating to the Fund Allocated Account specific bars of gold which the Gold Custodian holds, or instructing a sub-custodian to allocate specific bars of gold held by or for the sub-custodian.<sup>22</sup> However, the Exchange does not explain how this process will take place or provide sufficient details on how the costs involved will be allocated.

Furthermore, the Commission is concerned that the Exchange does not adequately explain how other aspects of the proposal are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, as required by Section 6(b)(5) of the Act. The Exchange states that the Administrator will value the gold held by the Fund using the LBMA Gold Price PM as published by the IBA.<sup>23</sup> This suggests that currently there is no price difference between responsibly sourced gold and non-responsibly sourced gold, but the Exchange does not provide sufficient evidence for the Commission to conclude that the price of responsibly sourced gold in the OTC spot market for gold is not different than for non-responsibly sourced gold.

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>24</sup> to determine whether the proposal should be approved or disapproved.

### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested

persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.<sup>25</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by January 3, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 14, 2022.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal in addition to any other comments they may wish to submit about the proposed rule change. In this regard, the Commission seeks commenters' views regarding the Exchange's proposal to list and trade the Shares is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, consistent with the Act.

Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2021–73 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2021–73. 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

<sup>25</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>17</sup> *Id.*

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 17 CFR 201.700(b)(3).

<sup>20</sup> *See id.*

<sup>21</sup> *See id.*

<sup>22</sup> *See* Notice, *supra* note 3, 86 FR at 50388.

<sup>23</sup> *Id.*

<sup>24</sup> 15 U.S.C. 78s(b)(2)(B).

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-NYSEArca-2021-73 and should be submitted by January 3, 2022. Rebuttal comments should be submitted by January 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2021-26712 Filed 12-9-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93721; File No. SR-CBOE-2021-070]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Temporary Remote Inspection Relief for Trading Permit Holder's Office Inspections for Calendar Years 2020 and 2021 To Include Calendar Year 2022 Through June 30, 2022

December 6, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November

24, 2021, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 a rule change to extend the temporary remote inspection relief for Trading Permit Holder's office inspections for calendar years 2020 and 2021 to include calendar year 2022 through June 30, 2022.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The COVID-19 pandemic has caused a host of operational disruptions to the securities industry and impacted Trading Permit Holders ("TPHs"), regulators, investors and other stakeholders. In response to the pandemic, the Exchange began providing temporary relief to TPHs from specified Exchange Rules and requirements, including Rule 9.2(d)

(Annual Branch Inspections). In November 2020, the Exchange adopted a provision in Rule 8.16(f) (Office Inspections), which has expired by its terms, that extended the time by which TPHs must complete their calendar year 2020 inspection obligations under Rule 8.16(f) to March 31, 2021, but with the expectation that firms would conduct their inspections on-site.<sup>5</sup> The Exchange also adopted Rule 9.2(d)(5), which automatically sunsets on December 31, 2021, to provide firms the option of satisfying their inspection obligations under Rule 8.16(f) and 9.2(d) remotely for calendar years 2020 and 2021, subject to specified conditions,<sup>6</sup> due to the logistical challenges of going on-site while public health and safety concerns related to COVID-19 persisted. The Exchange notes that these temporary rules are substantively identical to the temporary inspection extension and remote relief rules filed by the Financial Industry Regulatory Authority ("FINRA") in 2020.<sup>7</sup>

While there are signs of improvement, much uncertainty remains. The emergence of the Delta variant,<sup>8</sup> dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.<sup>9</sup>

<sup>5</sup> See Securities Exchange Act Release No. 90583 (December 7, 2020), 85 FR 8207 (December 12, 2020) (SR-CBOE-2020-112).

<sup>6</sup> See *id.*

<sup>7</sup> See Securities and Exchange Act Release Nos. 89188 (June 30, 2020), 85 FR 40713 (July 7, 2020) (SR-FINRA-2020-019); and 90454 (November 18, 2020), 85 FR 75097 (November 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-040).

<sup>8</sup> See The Centers for Disease Control and Prevention ("CDC"), What You Need to Know about Variants (stating, in part, that "the Delta variant causes more infections and spreads faster than earlier forms of the virus that causes COVID-19."), <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html> (updated September 3, 2021). See also CDC, The Possibility of COVID-19 Illness after Vaccination: Breakthrough Infections (stating, in part, that "COVID-19 vaccines are effective at preventing infection, serious illness, and death. Most people who get COVID-19 are unvaccinated. However, since vaccines are not 100% effective at preventing infection, some people who are fully vaccinated will still get COVID-19 . . . People who get vaccine breakthrough infections can be contagious."), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html> (updated August 23, 2021).

<sup>9</sup> For example, President Joe Biden on July 29, 2021, announced several measures to increase the number of people vaccinated against COVID-19 and to slow the spread of the Delta variant, including strengthening safety protocols for federal government employees and contractors. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/factsheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/>. More recently, President Joe Biden

<sup>26</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

The Exchange understands that firms have delayed their return to office plans due to the continued pandemic and are considering implementing or have implemented hybrid work arrangements dependent on functions and regulatory requirements.<sup>10</sup> To that end, in order to address ongoing industry-wide concerns regarding having to conduct in-person office inspections while safety concerns related to the pandemic persist and to align with pandemic-related regulatory relief provided by FINRA, which recently extended their substantively identical temporary remote inspection rules,<sup>11</sup> the Exchange proposes to extend Rule 9.2(d)(5) through June 30, 2022. The proposed extension would provide clarity to firms on regulatory requirements and account for the time needed for many firms to carefully assess when and how to have their employees safely return to their offices in light of vaccination coverage in the U.S. and transmission levels of the virus, including any emergent variants throughout the country.

By extending Rule 9.2(d)(5) to cover part of calendar year 2022 inspection obligations through June 30, 2022 only, the Exchange does not propose to amend the other conditions of the temporary rule. The proposed amendments to Rule 9.2(d)(5) simply provide that for calendar year 2022, a TPH has the option to conduct those inspections remotely through June 30, 2022. The current conditions of Rule 9.2(d)(5) for firms that elect to conduct remote inspections would remain unchanged: Such firms must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. The additional period of time would also enable the Exchange to further monitor the effectiveness of remote inspections and their impacts—positive or negative—on firms' overall supervisory systems in the evolving workplace.

on August 31, 2021, briefed the press on, among other things, the government's response to the COVID-19 surge, noting the government's continuing efforts to help states with Delta variant outbreaks. See <https://www.whitehouse.gov/briefing-room/press-briefings/2021/08/31/press-briefing-by-white-house-covid-19-response-team-and-public-health-officials-53/>.

<sup>10</sup> The Exchange notes that a majority of its TPHs are FINRA member firms as well, and that through FINRA's ongoing monitoring the Exchange has learned that many of its TPHs have delayed plans to require a full return to the office and that most continue to operate in a remote or hybrid environment.

<sup>11</sup> See Release No. 34-93002 (September 15, 2021), 86 FR 52508 (September 21, 2021) (File No. SR-FINRA-2021-023).

The Exchange continues to believe this temporary remote inspection option is a reasonable alternative to provide to firms to fulfill their Rule 8.16(f) and 9.2(d) obligations during the pandemic and is designed to achieve the investor protection objectives of the inspection requirements under these unique circumstances. Firms should consider whether, under their particular operating conditions, reliance on remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some form of in-person inspections would be feasible and appropriately contribute to a supervisory system that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules.

The Exchange again notes that FINRA recently filed for the same extension period of their remote relief rule,<sup>12</sup> which is substantively identical to Rule 9.2(d)(5).<sup>13</sup> Like FINRA, the Exchange proposes to make the proposed rule change operative on January 1, 2022.

#### 1. 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.<sup>14</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>16</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that, in recognition of the ongoing

impact of COVID 19 on performing the on-site inspection component of Rules 8.16(f) and 9.2(d), the proposed rule change is intended to provide firms a temporary regulatory option to conduct inspections of offices and locations remotely during the first half of calendar year 2022. This temporary remote relief rule and the proposed extension thereof does not relieve firms from meeting the core regulatory obligation to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules that directly serve investor protection. In a time when faced with ongoing challenges resulting from the COVID-19 pandemic, the Exchange believes that the proposed rule change provides sensibly tailored relief that will afford firms the ability to assess when and how to implement their work re-entry plans as measured against the health and safety of their personnel, while continuing to serve and promote the protection of investors and the public interest.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed temporary rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, because the proposed extension of the temporary remote inspection relief rule will apply equally to all TPHs required to conduct office and location inspections in calendar year 2022 through June 30, 2022. The Exchange further does not believe that the proposed extension to the temporary rule will impose any burden on intermarket competition because it relates only to the extension of the remote manner in which inspections for 2022 may be conducted. Additionally, and as stated above, FINRA has recently submitted a filing to extend its substantively identical temporary remote relief rule for its members in the same manner.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

<sup>12</sup> See *supra* note 11.

<sup>13</sup> See *supra* notes 5 and 7.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> *Id.*

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6)<sup>18</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2021-070 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-CBOE-2021-070. 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-CBOE-2021-070 and should be submitted on or before January 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## DEPARTMENT OF STATE

[Public Notice: 11605]

### Request for Information for the 2022 Trafficking in Persons Report

**ACTION:** Request for information for the 2022 Trafficking in Persons Report.

**SUMMARY:** The Department of State ("the Department") requests written information to assist in reporting on the degree to which the United States and foreign governments meet the minimum standards for the elimination of trafficking in persons ("minimum standards") that are prescribed by the Trafficking Victims Protection Act of 2000, as amended ("TVPA"). This information will assist in the preparation of the Trafficking in Persons Report ("TIP Report") that the Department submits annually to the U.S. Congress on governments' concrete actions to meet the minimum standards. Foreign governments that do not meet the minimum standards and are not making significant efforts to do so may be subject to restrictions on

nonhumanitarian, nontrade-related foreign assistance from the United States, as defined by the TVPA. Submissions must be made in writing to the Office to Monitor and Combat Trafficking in Persons at the Department of State by February 1, 2022. Please refer to the *Addresses*, *Scope of Interest*, and *Information Sought* sections of this Notice for additional instructions on submission requirements.

**DATES:** Submissions must be received by 5 p.m. on February 1, 2022.

**ADDRESSES:** Written submissions and supporting documentation may be submitted by the following method:

- *Email:* [tipreport@state.gov](mailto:tipreport@state.gov) for submissions related to foreign governments and [tipreportUS@state.gov](mailto:tipreportUS@state.gov) for submissions related to the United States.

*Scope of Interest:* The Department requests information relevant to assessing the United States' and foreign governments' concrete actions to meet the minimum standards for the elimination of trafficking in persons during the reporting period (April 1, 2021–March 31, 2022). The minimum standards are listed in the *Background* section. Submissions must include information relevant to efforts to meet the minimum standards and should include, but need not be limited to, answering the questions in the *Information Sought* section.

Submissions need not include answers to all the questions; only those questions for which the submitter has direct professional experience should be answered and that experience should be noted. For any critique or deficiency described, please provide a recommendation to remedy it. Note the country or countries that are the focus of the submission.

Submissions may include written narratives that answer the questions presented in this Notice, research, studies, statistics, fieldwork, training materials, evaluations, assessments, and other relevant evidence of local, state/provincial, and federal/central government efforts. To the extent possible, precise dates and numbers of officials or citizens affected should be included. Questions below seek to gather information and updates from the details provided and assessment on government efforts made in the 2021 TIP Report.

Furthermore, we request information on the government's treatment of "underserved communities," including how the government may have systemically denied opportunities to a community to participate in aspects of economic, social, and civic life that has

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

led to heightened risk to human trafficking or how the government's anti-trafficking response may have treated certain groups differently.

Written narratives providing factual information should provide citations of sources, and copies of and links to the source material should be provided. Please send electronic copies of the entire submission, including source material. If primary sources are used, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, provide details on the research or data-gathering methodology and any supporting documentation. The Department only includes in the TIP Report information related to trafficking in persons as defined by the TVPA; it does not include, and is therefore not seeking, information on prostitution, migrant smuggling, visa fraud, or child abuse, unless such crimes also involve the elements of sex trafficking or forced labor.

**Confidentiality:** Please provide the name, phone number, and email address of a single point of contact for any submission. It is Department practice not to identify in the TIP Report information concerning sources to safeguard those sources. Please note, however, that any information submitted to the Department may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. Submissions related to the United States will be shared with U.S. government agencies, as will submissions relevant to efforts by other U.S. government agencies.

**Response:** This is a request for information only; there will be no response to submissions.

#### **SUPPLEMENTARY INFORMATION:**

##### **1. Background**

**Definitions:** The TVPA defines "severe forms of trafficking in persons" as:

- The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act that is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.

- Persons under age 18 in commercial sex are trafficking in persons victims regardless of whether force, fraud, or coercion were involved.

- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purposes of involuntary servitude, peonage, debt bondage, or slavery.

- Forced labor may take the form of domestic servitude, forced begging, forced criminal activity (e.g., drug smuggling), and prison labor that is not the product of a conviction in a court of law.

- Children recruited or used as soldiers or for labor or services can be a severe form of human trafficking when the activity involves force, fraud, or coercion. Children may be victims regardless of gender.

**The TIP Report:** The TIP Report is the most comprehensive worldwide report on governments' efforts to combat trafficking in persons. It represents an annually updated, global assessment of the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it. The U.S. government uses the TIP Report to inform diplomacy, to encourage partnership in creating and implementing laws and policies to combat trafficking, and to target resources on prevention, protection, and prosecution programs. Worldwide, international organizations, foreign governments, and nongovernmental organizations use the TIP Report as a tool to examine where resources are most needed. Prosecuting traffickers, protecting victims, and preventing trafficking are the ultimate goals of the TIP Report and of the U.S. government's anti-trafficking policy.

The Department prepares the TIP Report with information from across the U.S. government, foreign government officials, nongovernmental and international organizations, survivors of trafficking in persons, published reports, and research related to every region. The TIP Report focuses on concrete actions that governments take to fight trafficking in persons, including prosecutions, convictions, and sentences for traffickers, as well as victim identification and protection measures and prevention efforts. Each TIP Report narrative also includes prioritized recommendations for each country. These recommendations are used to assist the Department in measuring governments' progress from one year to the next and determining whether governments meet the minimum standards for the elimination of trafficking in persons or are making significant efforts to do so.

The TVPA creates a four-tier ranking system. Tier placement is based principally on the extent of concrete government action to combat trafficking. The Department first evaluates whether the government fully meets the TVPA's minimum standards for the elimination of trafficking. Governments that do so are placed on Tier 1. For other

governments, the Department considers the extent of such efforts. Governments that are making significant efforts to meet the minimum standards are placed on Tier 2. Governments that do not fully meet the minimum standards and are not making significant efforts to do so are placed on Tier 3. Finally, the Department considers Special Watch List criteria and, when applicable, places countries on Tier 2 Watch List. For more information, the 2021 TIP Report can be found at <https://www.state.gov/reports/2021-trafficking-in-persons-report/>.

Since the inception of the TIP Report in 2001, the number of countries included and ranked has more than doubled; the 2021 TIP Report included 188 countries and territories. Around the world, the TIP Report and the promising practices reflected therein have inspired legislation, national action plans, policy implementation, program funding, protection mechanisms that complement prosecution efforts, and a stronger global understanding of this crime.

Since 2003, the primary reporting on the United States' anti-trafficking activities has been through the annual Attorney General's Report to Congress and Assessment of U.S. Government Activities to Combat Human Trafficking ("AG Report") mandated by section 105 of the TVPA (22 U.S.C. 7103(d)(7)). Since 2010, the TIP Report, through a collaborative interagency process, has included an assessment of U.S. government anti-trafficking efforts in light of the minimum standards to eliminate trafficking in persons set forth by the TVPA.

##### **II. Minimum Standards for the Elimination of Trafficking in Persons**

The TVPA sets forth the minimum standards for the elimination of trafficking in persons as follows:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly-reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State

for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with a demonstrably increasing capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons, measures to establish the identity of local populations, including birth registration, citizenship, and nationality, measures to ensure that its nationals who are deployed abroad as part of a diplomatic, peacekeeping, or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, a transparent system for remediating or punishing such public officials as a deterrent, measures to prevent the use of forced labor or child labor in violation of international standards, effective bilateral, multilateral, or regional information sharing and cooperation arrangements with other countries, and effective policies or laws regulating foreign labor recruiters and holding them civilly and criminally liable for fraudulent recruiting.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons and has entered into bilateral, multilateral, or regional law enforcement cooperation and coordination arrangements with other countries.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in

persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials, including diplomats and soldiers, who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a diplomatic, peacekeeping, or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone or enable such trafficking. A government's failure to appropriately address public allegations against such public officials, especially once such officials have returned to their home countries, shall be considered inaction under these criteria. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with a demonstrably increasing capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government has entered into effective, transparent partnerships, cooperative arrangements, or agreements that have resulted in concrete and measurable outcomes with—

(A) domestic civil society organizations, private sector entities, or international nongovernmental

organizations, or into multilateral or regional arrangements or agreements, to assist the government's efforts to prevent trafficking, protect victims, and punish traffickers; or

(B) the United States toward agreed goals and objectives in the collective fight against trafficking.

(10) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(11) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(12) Whether the government of the country has made serious and sustained efforts to reduce the demand for—

(A) commercial sex acts; and  
(B) participation in international sex tourism by nationals of the country.

### III. Information Sought Relevant to the Minimum Standards

Submissions should include, but need not be limited to, answers to relevant questions below for which the submitter has direct professional experience. Citations to source material should also be provided. Note the country or countries that are the focus of the submission. Please see the *Scope of Interest* section above for detailed information regarding submission requirements.

#### Overview

1. What were the government's major accomplishments in addressing human trafficking since April 1, 2021? In what significant ways have the government's efforts to combat trafficking in persons changed in the past year? How have new laws, regulations, policies, or implementation strategies (e.g., substantive criminal laws and procedures, mechanisms for civil remedies, and victim-witness security, generally and in relation to court proceedings) affected its anti-trafficking response?

2. Over the past year, what were the greatest deficiencies in the government's anti-trafficking efforts? What were the limitations on the government's ability to address human trafficking problems in practice?

3. How has the COVID-19 pandemic affected the government's efforts to coordinate, execute, and monitor its anti-trafficking response across its prosecution, protection, and prevention efforts, if at all? How have anti-trafficking officials, units, and



coordinating bodies continued to operate and adapt?

4. Please provide additional information and/or recommendations to improve the government's anti-trafficking efforts overall.

5. Please highlight effective strategies and practices that other governments could consider adopting.

#### *Prosecution*

6. Please provide observations regarding the implementation of existing laws, policies, and procedures. Are there gaps in anti-trafficking legislation that could be amended to improve the government's response? Are there any government policies that have undermined or otherwise negatively affected anti-trafficking efforts within that country?

7. Do government officials understand the nature of all forms of trafficking? If not, please provide examples of misconceptions or misunderstandings. Did the government effectively provide or support anti-trafficking trainings for officials? If not, how could they be improved?

8. Please provide observations on overall anti-trafficking law enforcement efforts and the efforts of police and prosecutors to pursue trafficking cases. Is the government equally vigorous in pursuing forced labor and sex trafficking, internal and transnational trafficking, and crimes that involve its own nationals or foreign citizens? Was the law equitably enforced, or were certain communities disproportionately affected? If not, why?

9. Please note any efforts to investigate and prosecute suspects for knowingly soliciting or patronizing a sex trafficking victim to perform a commercial sex act.

10. Does law enforcement pursue trafficking cases that would hold accountable private employers or corporations for forced labor in supply chains?

11. Do judges appear appropriately knowledgeable and sensitized to trafficking cases? Do they implement and encourage trauma-informed practices in their courts?

12. Were there allegations of official complicity in trafficking crimes, via contacts, media, or other sources, including of state-sponsored forced labor? If so, what measures did the government take to end such practices? What proactive measures did the government take to prevent official complicity in trafficking in persons crimes? How did the government respond to reports of complicity that arose during the reporting period, including investigations, prosecutions,

convictions, and sentencing of complicit officials? Were these efforts sufficient?

13. Is there evidence that nationals of the country deployed abroad as part of a diplomatic, peacekeeping, or other similar mission have engaged in or facilitated trafficking, including in domestic servitude? Has the government vigorously investigated, prosecuted, convicted, and sentenced nationals engaged in these activities?

#### *Protection*

14. Did the government make a coordinated, proactive effort to identify victims of all forms of trafficking? If the government had any written procedures for screening for trafficking, were those procedures sufficient and implemented effectively by officials? What steps do officials take if a potential case of human trafficking is identified, and are those steps sufficient? Did officials effectively coordinate among one another and with relevant nongovernmental organizations to conduct screenings and refer victims to care? Is there any trafficking screening conducted before deportation or when detaining migrants, including unaccompanied minors? Are interpreters available for screening foreign victims? If commercial sex is legalized or decriminalized in the country, how did health officials, labor inspectors, or police identify trafficking victims among persons involved in commercial sex? If commercial sex is illegal, did the government proactively identify trafficking victims during raids or other encounters with commercial sex establishments?

15. Does the government operate or fund any trafficking-specific hotlines (including those run by NGOs)? Did calls on government or NGO-operated hotlines lead to victim identification, victim referral to care, and/or criminal investigations? Did it remain in operation during the COVID-19 pandemic?

16. What victim services are available and provided (legal, medical, food, shelter, interpretation, mental health care, employment, training, etc.)? Who provides these services? If NGOs provide the services, does the government adequately support their work either financially or otherwise? Did all victims and survivors of both labor and sex trafficking—regardless of citizenship, gender identity, racial/ethnic identity, sexual orientation, religious affiliation, and physical ability—receive the same quality and level of access to services?

17. What was the overall quality of victim care? How could victim services be improved? Are services victim-

centered and trauma-informed? Were benefits linked to whether a victim assisted law enforcement or participated in a trial, or whether a trafficker was convicted? Could victims choose independently whether to enter a shelter, and could they leave at will if residing in a shelter? Could adult victims leave shelter premises unchaperoned? Could victims seek employment and work while receiving assistance?

18. Do service providers and law enforcement work together cooperatively, for instance to share information about trafficking trends or to plan for services after a raid? What is the level of cooperation, communication, and trust between service providers and law enforcement?

19. Were there means by which victims could obtain restitution from defendants in criminal cases or file civil suits against traffickers for damages, and did this happen in practice? Did prosecutors request and/or courts order restitution in all cases where it was required, and if not, why?

20. How did the government encourage victims to assist in the investigation and prosecution of trafficking? How did the government protect victims during the trial process? If a victim was a witness in a court case, was the victim permitted to obtain employment, move freely about the country, or leave the country pending trial proceedings? How did the government work to ensure victims were not re-traumatized during participation in trial proceedings? Could victims provide testimony via video or written statements? Were victims' identities kept confidential as part of such proceedings? In what ways could the government support increased participation of victims in prosecutions against their traffickers?

21. Did the government provide, through a formal policy or otherwise, temporary or permanent residency status, or other relief from deportation, for foreign victims of human trafficking who may face retribution or hardship in the countries to which they would be deported? Were foreign victims given the opportunity to seek legal employment while in this temporary or permanent residency? Were such benefits linked to whether a victim assisted law enforcement, whether a victim participated in a trial, or whether there was a successful prosecution? Does the government repatriate victims who wish to return home or assist with third country resettlement? Are victims awaiting repatriation or third country resettlement offered services? Are

victims indeed repatriated, or are they deported?

22. Does the government effectively assist its nationals exploited abroad? Does the government work to ensure victims receive adequate assistance and support for their repatriation while in destination countries? Does the government provide adequate assistance to repatriated victims after their return to their countries of origin, and if so, what forms of assistance?

23. Does the government arrest, detain, imprison, or otherwise punish trafficking victims (whether or not identified as such by authorities) for unlawful acts their traffickers compelled them to commit (forgery of documents, illegal immigration, unauthorized employment, prostitution, theft, or drug production or transport, etc.)? If so, do these victims disproportionately represent a certain gender, race, ethnicity, or other group or particular type of trafficking? Does law enforcement, immigration, and social services personnel conduct screening for trafficking, including of migrants, other vulnerable groups, and when detaining or arresting individuals engaged in commercial sex?

#### *Prevention*

24. What efforts has the government made to prevent human trafficking? Did the government enforce any policies that further marginalized communities already overrepresented among trafficking victims, increasing their risk to human trafficking? If so, did it take efforts to address those policies?

25. If the government had a national action plan to address trafficking, how was it implemented in practice? Were NGOs and other relevant civil society stakeholders consulted in the development and implementation of the plan?

26. Please describe any government-funded anti-trafficking information or education campaigns or training, whether aimed at the public or at specific sectors or stakeholders/actors. Did these campaigns or trainings target potential trafficking victims, potential first responders or other trusted authorities, known trafficking sectors or vulnerabilities, and/or the demand for human trafficking (e.g., buyers of commercial sex or goods produced with forced labor)? Does the government provide financial support to nongovernment organizations working to promote public awareness?

27. Did the government seek the input of survivors in crafting its anti-trafficking laws, regulations, policies, programs, or in their implementation? If so, did the government take steps to

ensure input was received from a diverse group of survivors?

28. How did the government regulate, oversee, and screen for trafficking indicators in the labor recruitment process, including for both licensed and unlicensed recruitment and placement agencies, individual recruiters, sub-brokerages, and microfinance lending operations? Specifically, did the government prohibit (in any context) charging workers recruitment fees? Also indicate if the government prohibited the recruitment of workers through knowingly fraudulent job offers (including misrepresenting wages, working conditions, location, or nature of the job), contract switching, and confiscating or otherwise denying workers access to their identity documents. If there are laws or regulations on recruitment, did the government effectively enforce them? Did the government allow migrant workers to change employers in a timely manner without obtaining special permissions?

29. Did the government coordinate with other governments (e.g., via bilateral agreements with migrant labor sending or receiving countries) on safe and responsible recruitment that included prevention measures to target known trafficking indicators? To what extent were these implemented? Are workers (both nationals of the country and foreign nationals) in all industries (e.g., domestic work, agriculture, etc.) equally and sufficiently protected under existing labor laws?

30. Did government policies, regulations, or agreements relating to migration, labor, trade, and investment facilitate vulnerabilities to, or incidence of, forced labor or sex trafficking? If so, what actions did the government take to ensure that its policies, regulations, and agreements relating to migration, labor, trade, border security measures, and investment did not facilitate trafficking?

31. Did the government take tangible action to prevent forced labor in domestic or global supply chains? Did the government make any efforts to prohibit and prevent trafficking in the supply chains of its own public procurement? What did the government do to ensure that its policies, regulations, and agreements relating to migration, labor, trade, and investment did not facilitate trafficking?

32. How did the government's response to the COVID-19 pandemic affect the ability of migrant workers to continue earning an income, to enter and exit the country, and to maintain their immigration status? Are there steps did the government took in response to the pandemic that increased or

mitigated the risk of human trafficking to migrants (border closures, job creation or placement for out-of-work labor migrants, extension of immigration relief, etc.)?

33. If the government has entered into bilateral, multilateral, or regional anti-trafficking information-sharing and cooperation arrangements, are they effective and have they resulted in concrete and measurable outcomes? If not, why?

34. Did the government provide assistance to other governments in combating trafficking in persons through trainings or other assistance programs?

35. What measures has the government taken to reduce the participation by nationals of the country in international and domestic child sex tourism?

#### *Territories and Semi-Autonomous Regions*

36. Please provide any information about trafficking trends and government anti-trafficking efforts in non-sovereign territories and semi-autonomous regions to prosecute traffickers, identify and provide services to victims, and prevent trafficking.

#### *Trafficking Profile*

37. Describe the country's trafficking situation, including the forms of trafficking that occur, industries and sectors in which traffickers exploit victims, countries/regions in which traffickers recruit victims, locations and regions in which trafficking occurs, and recruitment methods. What groups are at particular risk of human trafficking? Are citizens of the country identified as victims of human trafficking abroad? Does child sex tourism occur in the country or involve its nationals abroad, and if so, in which countries? Have trafficking methods and trends changed in the past 12 months, including as a result of the COVID-19 pandemic?

38. Chinese/Cuban/North Korean workers: Are any of these populations subjected to or at high risk of forced labor in the country as part of government-to-government agreements and/or in foreign government-affiliated projects?

#### *Child Soldiering*

39. Using the definition of "child soldier" as defined by the Child Soldiers Prevention Act of 2008 (CSPA), describe instances, cases, and reports, including anecdotal reports, of:

a. Use of any person under the age of 18 in direct hostilities as a member of governmental armed forces, police, or other security forces;

b. Conscripted or forced recruitment of persons under the age of 18 into governmental armed forces, police, or other security forces;

c. Voluntary recruitment of any person under 15 years of age into governmental armed forces, police, or other security forces;

d. Recruitment (forced or voluntary) or use in hostilities of persons under the age of 18 by armed groups distinct from the armed forces of a state.

e. Abuse of male and female children recruited by governmental armed forces, police, or other security forces, and government-supported armed groups (e.g., sexual abuse or use for forced labor). Describe the manner and age of conscription, noting differences in treatment or conscription patterns based on gender.

40. Did the government provide support to an armed group that recruits and/or uses child soldiers? What was the extent of the support (e.g., in-kind, financial, training, etc.)? Where did the provision of support occur (within the country or outside of the country)? In cases where the government was included on the CSPA list in 2021 based on its support to non-state armed groups that recruit and/or use child soldiers, describe whether the government took steps to pressure the group to cease its recruitment or use of child soldiers, publicly disavow the group's recruitment or use of child soldiers, or cease its support to that group.

41. Describe any government efforts to prevent or end child soldier recruitment or use, including efforts to disarm, demobilize, and reintegrate former child soldiers. (i.e., enacting any laws or regulations, implementing a United Nations Action Plan or Roadmap, specialized training for officials, procedures for age verification, etc.)

#### Kari Johnstone,

Senior Official, Office to Monitor and Combat Trafficking in Persons, Department of State.

[FR Doc. 2021-26806 Filed 12-9-21; 8:45 am]

BILLING CODE 4710-17-P

## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36566]

### Macquarie Infrastructure Partners V GP, LLC—Acquisition of Control Exemption—Grenada Railroad, LLC, and Florida, Gulf & Atlantic Railroad, LLC

Macquarie Infrastructure Partners V GP, LLC (MIP GP), a noncarrier, filed on behalf of MIP Infrastructure Partners V fund vehicle (MIP V) and MIP V Rail,

LLC (MIP Rail),<sup>1</sup> a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of two Class III railroads currently owned by RailUSA, LLC (RailUSA): Grenada Railroad, LLC (GRYR), and Florida, Gulf & Atlantic Railroad, LLC (FGA).<sup>2</sup>

The verified notice states that, pursuant to a Purchase Agreement dated November 23, 2021,<sup>3</sup> MIP Rail has agreed to acquire 100% of the equity interests of RailUSA from its parent, American Rail Partners, LLC, which will result in MIP Rail's indirect control of both GRYR and FGA. (Verified Notice 1.) According to the verified notice, MIP Rail, MIP V, MIP GP, and their affiliates do not own or control any other United States rail carriers.

MIP GP states that: (1) The lines over which GRYR and FGA operate do not connect with one another, (2) the proposed transaction is not part of a series of anticipated transactions that would connect the lines with each other; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

The earliest this transaction may be consummated is Friday, December 24, 2021, the effective date of the exemption (30 days after the verified notice was filed).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

<sup>1</sup> The verified notice states that MIP Rail is wholly owned by MIP V, which is controlled by MIP GP. (Verified Notice 1 n.1, 3.)

<sup>2</sup> GRYR, formerly known as Illinois Company Rail Road, LLC (ICRR), operates 228 miles of rail line in Mississippi pursuant to a lease with the North Central Mississippi Regional Railroad Authority. (Verified Notice 2 n.3); see *Ill. Co. R.R.—Lease & Operation Exemption—N. Cent. Miss. Reg'l R.R. Auth.*, FD 35940, slip op. at 1 (STB served July 9, 2015) (describing ICRR's verified notice to lease and operate an approximately 186.82-mile rail line in Mississippi). FGA owns and operates 430 miles of track, including a 373-mile main line, in Florida and Georgia. (Verified Notice 2 n.3); see *RailUSA, LLC—Continuance in Control Exemption—Fla. Gulf & Atl. R.R.*, FD 36248, slip op. at 1 (STB served Dec. 21, 2018).

<sup>3</sup> Public and confidential versions of the Purchase Agreement were filed with the verified notice. The confidential version was submitted under seal concurrently with a motion for protective order, which is addressed in a separate decision.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 17, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36566, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on MIP GP's representative, Terence M. Hynes, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005.

According to MIP GP, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: December 3, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Eden Besera,**

Clearance Clerk.

[FR Doc. 2021-26697 Filed 12-9-21; 8:45 am]

BILLING CODE 4915-01-P

## TENNESSEE VALLEY AUTHORITY

### Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

**AGENCY:** Tennessee Valley Authority.

**ACTION:** 60-Day notice of submission of information collection approval and request for comments; Correction.

**SUMMARY:** The Tennessee Valley Authority published a document in the **Federal Register** of November 24, 2021, concerning a proposed information collection that will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Tennessee Valley Authority is soliciting public comments on this proposed collection. The document contained incorrect dates.

**FOR FURTHER INFORMATION CONTACT:** Public Information Collection Clearance Officer: Jennifer A. Wilds, Specialist, Records Compliance, Tennessee Valley Authority, 400 W Summit Hill Dr., CLK-320, Knoxville, Tennessee 37902-1401; telephone (865) 632-6580 or by email at [pra@tva.gov](mailto:pra@tva.gov).

**SUPPLEMENTARY INFORMATION:****Correction**

In the **Federal Register** of November 24, 2021, in FR Doc. 2021–25664, on page 67112, in the first column, correct the **DATES** caption to read:

**DATES:** Comments should be sent to the Information Collection Clearance Officer no later than January 24, 2022.

Dated: December 3, 2021.

**Rebecca L. Coffey,**

*Agency Records Officer.*

[FR Doc. 2021–26927 Filed 12–9–21; 8:45 am]

**BILLING CODE 8120–08–P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Notice of Final Federal Agency Action on a Proposed Highway Project in Wisconsin**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA.

**SUMMARY:** The FHWA is issuing this notice to announce actions taken that are final Federal agency actions. The final agency actions relate to a proposed highway project, along Interstate 41 (I–41) in Outagamie and Brown counties, Wisconsin between State Highway (WIS) 96 (Wisconsin Avenue) in the City of Appleton and County F (Scheuring Road) in the City of De Pere. Those actions grant approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 9, 2022. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For FHWA, Bethaney Bacher-Gresock, Environmental Program and Project Specialist, FHWA Wisconsin Division Office, City Center West, 525 Junction Road, Suite 8000, Madison, WI 53717; email [bethaney.bacher-gresock@dot.gov](mailto:bethaney.bacher-gresock@dot.gov); telephone: (608) 662–2119. For Wisconsin Department of Transportation (WisDOT), Scott Ebel, WisDOT Project Manager, WisDOT NE-Region, Green Bay Office, 944 Van Der Perren Way, Green Bay, WI 54304; email

[scott.ebel@dot.wi.gov](mailto:scott.ebel@dot.wi.gov); telephone: (920) 360–2225.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that FHWA has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project: The I–41 Project in Outagamie and Brown counties, Wisconsin. The FHWA, in cooperation with WisDOT, proposes reconstruction and widening of I–41 between WIS 96 in Appleton and County F in De Pere.

The proposed improvement would:

1. Add an additional travel lane in each direction (total of 3-through-lanes in each direction).
2. Reconstruct the existing service and system interchanges.
3. Add a new service interchange at County EB/GV (South Bridge Connector).
4. Replace six of the eight local and County road overpasses over I–41.
5. Reconstruct and upgrade I–41 to current WisDOT and American Association of State Highway and Transportation Officials (AASHTO) design standards where practicable.
6. Provide a new Wrightstown Safety and Weight Enforcement Facility (SWEF) and 2-story building for the State Patrol's Northeast District Headquarters at the existing SWEF location.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA)/ Finding of No Significant Impact (FONSI) for the project, approved on November 18, 2021, and in other documents in the FHWA project records. The EA, FONSI and other project records are available by contacting WisDOT or FHWA at the addresses provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The EA/FONSI may be viewed and downloaded from the project website at: <https://wisconsin.dot.gov/Pages/projects/by-region/ne/i41/default.aspx>.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Section 7 of the Endangered Species Act of 1973 (ESA) [16 U.S.C. 1531–1544 and Section 1536].
3. National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

4. Clean Air Act [42 U.S.C. 7401–7671 (q)].

5. Clean Water Act [Section 404, Section 401, Section 319].

6. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

7. Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended [42 U.S.C. 4601 *et seq.*].

8. Migratory Bird Treaty Act (MBTA) of 1918, as amended [16 U.S.C. 703 *et seq.*].

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1))

Issued on: December 2, 2021.

**Glenn Fulkerson,**

*Division Administrator, Federal Highway Administration, Madison, Wisconsin.*

[FR Doc. 2021–26540 Filed 12–9–21; 8:45 am]

**BILLING CODE 4910–RY–P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–2000–7006; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2001–9561; FMCSA–2002–11714; FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2004–19477; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–26653; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2007–29019; FMCSA–2008–0106; FMCSA–2008–0398; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0321; FMCSA–2010–0114; FMCSA–2010–0385; FMCSA–2011–0057; FMCSA–2011–0102; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2011–0142; FMCSA–2012–0039; FMCSA–2012–0160; FMCSA–2012–0280; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0166; FMCSA–2013–0169; FMCSA–2014–0003; FMCSA–2014–0007; FMCSA–2014–0011; FMCSA–2014–0298; FMCSA–2014–0300; FMCSA–2014–0301; FMCSA–2014–0305; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2016–0207; FMCSA–2017–0014; FMCSA–2017–0017; FMCSA–2017–0019; FMCSA–2017–0022; FMCSA–2017–0023; FMCSA–2018–0208; FMCSA–2019–0005; FMCSA–2019–0008; FMCSA–2019–0009; FMCSA–2019–0011; FMCSA–2019–0013; FMCSA–2019–0015]

**Qualification of Drivers; Exemption Applications; Vision**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 102 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

*A. Viewing Comments*

To view comments go to [www.regulations.gov](http://www.regulations.gov), insert the docket number, FMCSA-1999-5578, FMCSA-1999-5748, FMCSA-2000-7006, FMCSA-2000-7918, FMCSA-2000-8398, FMCSA-2001-9561, FMCSA-2002-11714, FMCSA-2003-14504, FMCSA-2003-15268, FMCSA-2004-19477, FMCSA-2005-20560, FMCSA-2006-24783, FMCSA-2006-26653, FMCSA-2007-27333, FMCSA-2007-27897, FMCSA-2007-29019, FMCSA-2008-0106, FMCSA-2008-0398, FMCSA-2009-0154, FMCSA-2009-0206, FMCSA-2009-0321, FMCSA-2010-0114, FMCSA-2010-0385, FMCSA-2011-0057, FMCSA-2011-0102, FMCSA-2011-0124, FMCSA-2011-0140, FMCSA-2011-0141, FMCSA-2011-0142, FMCSA-2012-0039, FMCSA-2012-0160, FMCSA-2012-0280, FMCSA-2013-0025, FMCSA-2013-0027, FMCSA-2013-0029, FMCSA-2013-0166, FMCSA-2013-0169, FMCSA-2014-0003, FMCSA-2014-0007, FMCSA-2014-0011, FMCSA-2014-0298, FMCSA-2014-0300, FMCSA-2014-0301, FMCSA-2014-0305, FMCSA-2015-0049, FMCSA-2015-0052, FMCSA-2015-0053, FMCSA-2015-0055, FMCSA-2015-0056, FMCSA-2016-0207, FMCSA-2017-0014, FMCSA-2017-0017, FMCSA-2017-0019,

FMCSA-2017-0022, FMCSA-2017-0023, FMCSA-2018-0208, FMCSA-2019-0005, FMCSA-2019-0008, FMCSA-2019-0009, FMCSA-2019-0011, FMCSA-2019-0013, or FMCSA-2019-0015 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

*B. Privacy Act*

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

**II. Background**

On October 19, 2021, FMCSA published a notice announcing its decision to renew exemptions for 102 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (86 FR 57883). The public comment period ended on November 18, 2021, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

**III. Discussion of Comments**

FMCSA received no comments in this proceeding.

**IV. Conclusion**

Based on its evaluation of the 102 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

As of November 1, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 87 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027, 64 FR 51568, 65 FR 20245, 65 FR 57230, 65 FR 66286, 65 FR 78256, 66 FR 13825, 66 FR 16311, 66 FR 30502, 66 FR 41654, 66 FR 48504, 67 FR 15662, 67 FR 37907, 67 FR 57266, 68 FR 13360, 68 FR 19598, 68 FR 33570, 68 FR 37197, 68 FR 44837, 68 FR 48989, 68 FR 54775, 69 FR 26206, 69 FR 62741, 69 FR 64806, 70 FR 2705, 70 FR 12265, 70 FR 17504, 70 FR 25878, 70 FR 30997, 70 FR 41811, 70 FR 42615, 70 FR 53412, 71 FR 26601, 71 FR 32183, 71 FR 41310, 71 FR 62147, 72 FR 1056, 72 FR 5489, 72 FR 8417, 72 FR 11426, 72 FR 12666, 72 FR 25831, 72 FR 27624, 72 FR 28093, 72 FR 36099, 72 FR 39879, 72 FR 40360, 72 FR 40362, 72 FR 52419, 72 FR 62896, 73 FR 35194, 73 FR 36955, 73 FR 48273, 73 FR 74565, 73 FR 76440, 74 FR 7097, 74 FR 8302, 74 FR 15584, 74 FR 15586, 74 FR 19270, 74 FR 20253, 74 FR 26466, 74 FR 26471, 74 FR 34395, 74 FR 34632, 74 FR 37295, 74 FR 43221, 74 FR 48343, 75 FR 1835, 75 FR 9482, 75 FR 34211, 75 FR 36778, 75 FR 36779, 75 FR 44050, 75 FR 47888, 75 FR 66423, 75 FR 77492, 75 FR 80887, 76 FR 5425, 76 FR 11215, 76 FR 12215, 76 FR 15361, 76 FR 21796, 76 FR 25762, 76 FR 29022, 76 FR 29026, 76 FR 34133, 76 FR 34136, 76 FR 37169, 76 FR 37173, 76 FR 44082, 76 FR 44652, 76 FR 49528, 76 FR 49531, 76 FR 50318, 76 FR 53708, 76 FR 55463, 76 FR 61143, 77 FR 20879, 77 FR 31427, 77 FR 38381, 77 FR 38384, 77 FR 40945, 77 FR 48590, 77 FR 51846, 77 FR 64839, 77 FR 68199, 77 FR 68202, 77 FR 75494, 78 FR 800, 78 FR 4531, 78 FR 12813, 78 FR 12822, 78 FR 14410, 78 FR 16761, 78 FR 20376, 78 FR 22596, 78 FR 24798, 78 FR 26106, 78 FR 30954, 78 FR 3414, 78 FR 46407, 78 FR 51268, 78 FR 56993, 78 FR 57677, 78 FR 57679, 78 FR 62935, 78 FR 64274, 78 FR 76395, 78 FR 77778, 78 FR 77782, 78 FR 78477, 79 FR 4531, 79 FR 14571, 79 FR 28588, 79 FR 35218, 79 FR 38659, 79 FR 40945, 79 FR 41740, 79 FR 53514, 79 FR 56099, 79 FR 65759, 79 FR 65760, 79 FR 68199, 79 FR 69985, 79 FR 70928, 80 FR 603, 80 FR 2473, 80 FR 3723, 80 FR 6162, 80 FR 8751, 80 FR

8927, 80 FR 12254, 80 FR 12547, 80 FR 15859, 80 FR 16502, 80 FR 18693, 80 FR 20562, 80 FR 22773, 80 FR 25766, 80 FR 26320, 80 FR 29149, 80 FR 31636, 80 FR 31957, 80 FR 31962, 80 FR 35699, 80 FR 36395, 80 FR 36398, 80 FR 37718, 80 FR 40122, 80 FR 41548, 80 FR 44185, 80 FR 44188, 80 FR 45573, 80 FR 48404, 80 FR 48413, 80 FR 49302, 80 FR 50915, 80 FR 53383, 80 FR 59225, 80 FR 62161, 80 FR 62163, 81 FR 15401, 81 FR 70248, 81 FR 80161, 81 FR 90046, 81 FR 90050, 81 FR 91239, 81 FR 96165, 81 FR 96180, 81 FR 96196, 82 FR 13043, 82 FR 13048, 82 FR 15277, 82 FR 17736, 82 FR 18818, 82 FR 18949, 82 FR 20962, 82 FR 22379, 82 FR 23712, 82 FR 26224, 82 FR 32919, 82 FR 33542, 82 FR 35043, 82 FR 35050, 82 FR 37499, 82 FR 37504, 82 FR 43647, 82 FR 47295, 82 FR 47309, 82 FR 47312, 83 FR 2289, 83 FR 4537, 83 FR 28325, 83 FR 34661, 83 FR 40638, 83 FR 53724, 83 FR 56902, 83 FR 60954, 84 FR 2305, 84 FR 2311, 84 FR 2314, 84 FR 2326, 84 FR 10389, 84 FR 12665, 84 FR 16320, 84 FR 16333, 84 FR 21393, 84 FR 21397, 84 FR 21401, 84 FR 23629, 84 FR 27688, 84 FR 33801, 84 FR 46088, 84 FR 47038, 84 FR 47045, 84 FR 47047, 84 FR 47052, 84 FR 47057, 84 FR 52160, 84 FR 52166, 84 FR 58437, 84 FR 66444):

Michael K. Adams (OH)  
 Harold D. Albrecht (IL)  
 Jawad K. Al-Shaibani (AZ)  
 Scott R. Barber (IL)  
 Edmund J. Barron (PA)  
 Michael R. Bradford (MD)  
 Ronald G. Bradley (IN)  
 Steven R. Brinegar (TX)  
 Kevin W. Cannon (TX)  
 Roger C. Carson (IN)  
 Sherman W. Clapper (ID)  
 Glenn E. Coombes (TX)  
 Jimmie E. Curtis (NM)  
 Paul W. Dawson (CO)  
 Brandon G. Dills (NC)  
 Timothy H. DuBois (MN)  
 Raymond C. Favreau (VT)  
 Kevin M. Finn (NY)  
 Ronald D. Flanery (KY)  
 Andrew G. Fornsel (NY)  
 Ronald R. Fournier (NY)  
 Kamal A. Gaddah (OH)  
 Leslie W. Good (OR)  
 Danny G. Goodman (TX)  
 David N. Groff (PA)  
 Harlan L. Gunter (VA)  
 James P. Guth (PA)  
 Refugio Haro (IL)  
 Tyrane Harper (AL)  
 James W. Harris (TX)  
 Kevin L. Harrison (TN)  
 Brett K. Hasty (GA)  
 Larry R. Hayes (KS)  
 Jerome A. Henderson (VA)  
 Stephen T. Hines (NJ)  
 Wesley D. Hogue (AR)  
 Steven P. Holden (MD)

Tommie T. Hudson (VA)  
 Edgar A. Ideler (IL)  
 Michael W. Ireland (MA)  
 Johnny L. Irvin (MS)  
 Wayne E. Jakob (IL)  
 Gregory R. Johnson (SC)  
 Harry L. Jones (OH)  
 James A. Jones (MD)  
 Thomas W. Kent (IN)  
 Ibrahim F. Khashan (GA)  
 Mark V. Kneib (MO)  
 Earney J. Knox (MO)  
 Russell P. Kosinko (PA)  
 Roosevelt Lawson (AL)  
 Louis R. LeMonds (WA)  
 Stephen M. Lovell (TX)  
 Michael M. Martinez (NM)  
 Jonathan D. Matlasz (CT)  
 Joe L. Meredith, Jr. (VA)  
 Anthony R. Miles (NV)  
 Vincent P. Miller (CA)  
 William H. Moore (AL)  
 Benny R. Morris (WV)  
 Robert A. Moss (MO)  
 Jay C. Naccarato (WA)  
 Kenneth L. Nau (MD)  
 Edward P. Paloskey (PA)  
 Armando F. Pedroso Jimenez (MN)  
 Gonzalo Pena (FL)  
 Bobby G. Pool, Sr. (TX)  
 Edward J. Puto (CT)  
 Barry L. Pylant (GA)  
 Scott K. Richardson (OH)  
 Thomas E. Riley (NJ)  
 Glen E. Robbins (WY)  
 Elvis E. Rogers, Jr. (TX)  
 Terrence F. Ryan (FL)  
 Kirby R. Sands (IA)  
 William D. Shelt (AL)  
 Peter M. Shirk (PA)  
 Charles P. Smith (MO)  
 Hoyt V. Smith (SC)  
 Marcial Soto-Rivas (OR)  
 David A. Stinelli (PA)  
 James T. Sullivan (KY)  
 David C. Sybesma (ID)  
 Curtis M. Tharpe (VA)  
 Steven M. Veloz (CA)  
 Forrest L. Wright (AL)  
 Kurt A. Yoder (OH)

The drivers were included in docket numbers FMCSA-1999-5578, FMCSA-2000-7006, FMCSA-2000-7918, FMCSA-2000-8398, FMCSA-2001-9561, FMCSA-2002-11714, FMCSA-2003-14504, FMCSA-2003-15268, FMCSA-2004-19477, FMCSA-2005-20560, FMCSA-2006-24783, FMCSA-2006-26653, FMCSA-2007-27333, FMCSA-2007-27897, FMCSA-2008-0106, FMCSA-2008-0398, FMCSA-2009-0154, FMCSA-2009-0321, FMCSA-2010-0114, FMCSA-2010-0385, FMCSA-2011-0102, FMCSA-2011-0124, FMCSA-2011-0140, FMCSA-2011-0142, FMCSA-2012-0039, FMCSA-2012-0160, FMCSA-2012-0280, FMCSA-2013-0025,

FMCSA-2013-0027, FMCSA-2013-0166, FMCSA-2013-0169, FMCSA-2014-0003, FMCSA-2014-0007, FMCSA-2014-0011, FMCSA-2014-0298, FMCSA-2014-0300, FMCSA-2014-0301, FMCSA-2014-0305, FMCSA-2015-0049, FMCSA-2015-0052, FMCSA-2015-0053, FMCSA-2015-0055, FMCSA-2016-0207, FMCSA-2017-0014, FMCSA-2017-0017, FMCSA-2017-0019, FMCSA-2017-0022, FMCSA-2017-0023, FMCSA-2018-0208, FMCSA-2019-0005, FMCSA-2019-0008, FMCSA-2019-0009, FMCSA-2019-0011, FMCSA-2019-0013, and FMCSA-2019-0015. Their exemptions were applicable as of November 1, 2021 and will expire on November 1, 2023.

As of November 3, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 40445, 76 FR 53710, 78 FR 34143, 78 FR 52602, 79 FR 4531, 80 FR 50917, 80 FR 59230, 81 FR 1284, 82 FR 32919, 82 FR 47312, 83 FR 3861, 84 FR 52585):

Walter A. Hanselman (IN)  
 Amos S. Hostetter (OH)  
 Michael A. Kelly (TX)  
 Jesse A. Nosbush (MN)  
 Danny L. Watson (TN)

The drivers were included in docket numbers FMCSA-2011-0141, FMCSA-2013-0029, and FMCSA-2015-0056. Their exemptions were applicable as of November 3, 2021 and will expire on November 3, 2023.

As of November 6, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (74 FR 43217, 74 FR 57551, 76 FR 18824, 76 FR 29024, 76 FR 66123, 78 FR 77782, 79 FR 24298, 80 FR 63869, 83 FR 3861, 84 FR 52585):

Steven R. Lechtenberg (NE); Jesse R. McClary, Sr. (MO); and Halman Smith (DE)

The drivers were included in docket numbers FMCSA-2009-0206 and FMCSA-2011-0057. Their exemptions were applicable as of November 6, 2021 and will expire on November 6, 2023.

As of November 28, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (72 FR 58362, 72

FR 67344, 74 FR 57553, 76 FR 70212, 80 FR 63869, 83 FR 3861, 84 FR 52585):

Robert W. Bequeaith (IA)  
Loren H. Geiken (SD)  
Amilton T. Monteiro (MA)  
David G. Oakley (SC)

The drivers were included in docket number FMCSA-2007-29019. Their exemptions were applicable as of November 28, 2021 and will expire on November 28, 2023.

As of November 30, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027, 64 FR 40404, 64 FR 51568, 64 FR 66962, 66 FR 63289, 68 FR 64944, 70 FR 67776, 72 FR 64273, 74 FR 62632, 76 FR 70215, 78 FR 64280, 80 FR 63869, 83 FR 3861, 84 FR 52585):

Terry J. Aldridge (MS); Thomas E. Walsh (CA); and Kevin P. Weinhold (MA)

The drivers were included in docket numbers FMCSA-1999-5578 and FMCSA-1999-5748. Their exemptions were applicable as of November 30, 2021 and will expire on November 30, 2023.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2021-26798 Filed 12-9-21; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1998-4334; FMCSA-1999-5578; FMCSA-1999-6156; FMCSA-2001-9561; FMCSA-2002-12844; FMCSA-2003-16241; FMCSA-2005-20560; FMCSA-2005-22194; FMCSA-2005-22727; FMCSA-2006-24783; FMCSA-2006-26653; FMCSA-2007-0017; FMCSA-2007-27333; FMCSA-2007-27897; FMCSA-2008-0398; FMCSA-2009-0121; FMCSA-2009-0303; FMCSA-2010-0187; FMCSA-2010-0354; FMCSA-2011-0010; FMCSA-2011-0024; FMCSA-2011-0057; FMCSA-2011-0092; FMCSA-2011-0102; FMCSA-2011-0142; FMCSA-2011-0189; FMCSA-2011-0298; FMCSA-2011-0299; FMCSA-2011-0366; FMCSA-2011-26690; FMCSA-2013-0021; FMCSA-2013-0022; FMCSA-2013-0025; FMCSA-2013-0027; FMCSA-2013-0029; FMCSA-2013-0165; FMCSA-2013-0167; FMCSA-2013-0168; FMCSA-2013-0169; FMCSA-2013-0170; FMCSA-2014-0003; FMCSA-2014-0007; FMCSA-2014-0296; FMCSA-2014-0297; FMCSA-2014-0299; FMCSA-2015-0048; FMCSA-2015-0049; FMCSA-2015-0053; FMCSA-2015-0055; FMCSA-2015-0056; FMCSA-2015-0070; FMCSA-2015-0072; FMCSA-2015-0344; FMCSA-2016-0213; FMCSA-2016-0214; FMCSA-2017-0014; FMCSA-2017-0018; FMCSA-2017-0020; FMCSA-2017-0022; FMCSA-2017-0023; FMCSA-2017-0024; FMCSA-2018-0209; FMCSA-2019-0004; FMCSA-2019-0006; FMCSA-2019-0013; FMCSA-2019-0014; FMCSA-2019-0015; FMCSA-2019-0019; FMCSA-2020-0018]

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 109 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before January 10, 2022.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-1998-4334, Docket No. FMCSA-1999-5578, Docket No. FMCSA-1999-6156, Docket No.

FMCSA-2001-9561, Docket No. FMCSA-2002-12844, Docket No. FMCSA-2003-16241, Docket No. FMCSA-2005-20560, Docket No. FMCSA-2005-22194, Docket No. FMCSA-2005-22727, Docket No. FMCSA-2006-24783, Docket No. FMCSA-2006-26653, Docket No. FMCSA-2007-0017, Docket No. FMCSA-2007-27333, Docket No. FMCSA-2007-27897, Docket No. FMCSA-2008-0398, Docket No. FMCSA-2009-0121, Docket No. FMCSA-2009-0303, Docket No. FMCSA-2010-0187, Docket No. FMCSA-2010-0354, Docket No. FMCSA-2011-0010, Docket No. FMCSA-2011-0024, Docket No. FMCSA-2011-0057, Docket No. FMCSA-2011-0092, Docket No. FMCSA-2011-0102, Docket No. FMCSA-2011-0142, Docket No. FMCSA-2011-0189, Docket No. FMCSA-2011-0298, Docket No. FMCSA-2011-0299, Docket No. FMCSA-2011-0366, Docket No. FMCSA-2011-26690, Docket No. FMCSA-2013-0021, Docket No. FMCSA-2013-0022, Docket No. FMCSA-2013-0025, Docket No. FMCSA-2013-0027, Docket No. FMCSA-2013-0029, Docket No. FMCSA-2013-0165, Docket No. FMCSA-2013-0167, Docket No. FMCSA-2013-0168, Docket No. FMCSA-2013-0169, Docket No. FMCSA-2013-0170, Docket No. FMCSA-2014-0003, Docket No. FMCSA-2014-0007, Docket No. FMCSA-2014-0296, Docket No. FMCSA-2014-0297, Docket No. FMCSA-2014-0299, Docket No. FMCSA-2015-0048, Docket No. FMCSA-2015-0049, Docket No. FMCSA-2015-0053, Docket No. FMCSA-2015-0055, Docket No. FMCSA-2015-0056, Docket No. FMCSA-2015-0070, Docket No. FMCSA-2015-0072, Docket No. FMCSA-2015-0344, Docket No. FMCSA-2016-0213, Docket No. FMCSA-2016-0214, Docket No. FMCSA-2017-0014, Docket No. FMCSA-2017-0018, Docket No. FMCSA-2017-0020, Docket No. FMCSA-2017-0022, Docket No. FMCSA-2017-0023, Docket No. FMCSA-2017-0024, Docket No. FMCSA-2018-0209, Docket No. FMCSA-2019-0004, Docket No. FMCSA-2019-0006, Docket No. FMCSA-2019-0013, Docket No. FMCSA-2019-0014, Docket No. FMCSA-2019-0015, Docket No. FMCSA-2019-0019, or Docket No. FMCSA-2020-0018 using any of the following methods:

• *Federal eRulemaking Portal*: Go to [www.regulations.gov/](http://www.regulations.gov/), insert the docket number, FMCSA-1998-4334, FMCSA-1999-5578, FMCSA-1999-6156, FMCSA-2001-9561, FMCSA-2002-12844, FMCSA-2003-16241, FMCSA-2005-20560, FMCSA-2005-22194, FMCSA-2005-22727, FMCSA-2006-24783, FMCSA-2006-26653, FMCSA-2007-0017, FMCSA-2007-27333, FMCSA-2007-27897, FMCSA-2008-0398, FMCSA-2009-0121, FMCSA-2009-0303, FMCSA-2010-0187, FMCSA-2010-0354, FMCSA-2011-0010, FMCSA-2011-0024, FMCSA-2011-0057, FMCSA-2011-0092, FMCSA-2011-0102, FMCSA-2011-0142, FMCSA-2011-0189, FMCSA-2011-0298, FMCSA-2011-0299, FMCSA-2011-0366, FMCSA-2011-26690, FMCSA-2013-0021, FMCSA-2013-0022, FMCSA-2013-0025, FMCSA-2013-0027, FMCSA-2013-0029, FMCSA-2013-0165, FMCSA-2013-0167, FMCSA-2013-0168, FMCSA-2013-0169, FMCSA-2013-0170, FMCSA-2014-0003, FMCSA-2014-0007, FMCSA-2014-0296, FMCSA-2014-0297, FMCSA-2014-0299, FMCSA-2015-0048, FMCSA-2015-0049, FMCSA-2015-0053, FMCSA-2015-0055, FMCSA-2015-0056, FMCSA-2015-0070, FMCSA-2015-0072, FMCSA-2015-0344, FMCSA-2016-0213, FMCSA-2016-0214, FMCSA-2017-0014, FMCSA-2017-0018, FMCSA-2017-0020, FMCSA-2017-0022, FMCSA-2017-0023, FMCSA-2017-0024, FMCSA-2018-0209, FMCSA-2019-0004, FMCSA-2019-0006, FMCSA-2019-0013, FMCSA-2019-0014, FMCSA-2019-0015, FMCSA-2019-0019, FMCSA-2020-0018 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

• *Mail*: Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

• *Hand Delivery*: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

• *Fax*: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT**: Ms. Christine A. Hydock, Chief, Medical

Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Participation**

###### *A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-1998-4334; FMCSA-1999-5578; FMCSA-1999-6156; FMCSA-2001-9561; FMCSA-2002-12844; FMCSA-2003-16241; FMCSA-2005-20560; FMCSA-2005-22194; FMCSA-2005-22727; FMCSA-2006-24783; FMCSA-2006-26653; FMCSA-2007-0017; FMCSA-2007-27333; FMCSA-2007-27897; FMCSA-2008-0398; FMCSA-2009-0121; FMCSA-2009-0303; FMCSA-2010-0187; FMCSA-2010-0354; FMCSA-2011-0010; FMCSA-2011-0024; FMCSA-2011-0057; FMCSA-2011-0092; FMCSA-2011-0102; FMCSA-2011-0142; FMCSA-2011-0189; FMCSA-2011-0298; FMCSA-2011-0299; FMCSA-2011-0366; FMCSA-2011-26690; FMCSA-2013-0021; FMCSA-2013-0022; FMCSA-2013-0025; FMCSA-2013-0027; FMCSA-2013-0029; FMCSA-2013-0165; FMCSA-2013-0167; FMCSA-2013-0168; FMCSA-2013-0169; FMCSA-2013-0170; FMCSA-2014-0003; FMCSA-2014-0007; FMCSA-2014-0296; FMCSA-2014-0297; FMCSA-2014-0299; FMCSA-2015-0048; FMCSA-2015-0049; FMCSA-2015-0053; FMCSA-2015-0055; FMCSA-2015-0056; FMCSA-2015-0070; FMCSA-2015-0072; FMCSA-2015-0344; FMCSA-2016-0213; FMCSA-2016-0214; FMCSA-2017-0014; FMCSA-2017-0018; FMCSA-2017-0020; FMCSA-2017-0022; FMCSA-2017-0023; FMCSA-2017-0024; FMCSA-2018-0209; FMCSA-2019-0004; FMCSA-2019-0006; FMCSA-2019-0013; FMCSA-2019-0014; FMCSA-2019-0015; FMCSA-2019-0019; FMCSA-2020-0018), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email

address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to [www.regulations.gov/](http://www.regulations.gov/), insert the docket number, FMCSA-1998-4334, FMCSA-1999-5578, FMCSA-1999-6156, FMCSA-2001-9561, FMCSA-2002-12844, FMCSA-2003-16241, FMCSA-2005-20560, FMCSA-2005-22194, FMCSA-2005-22727, FMCSA-2006-24783, FMCSA-2006-26653, FMCSA-2007-0017, FMCSA-2007-27333, FMCSA-2007-27897, FMCSA-2008-0398, FMCSA-2009-0121, FMCSA-2009-0303, FMCSA-2010-0187, FMCSA-2010-0354, FMCSA-2011-0010, FMCSA-2011-0024, FMCSA-2011-0057, FMCSA-2011-0092, FMCSA-2011-0102, FMCSA-2011-0142, FMCSA-2011-0189, FMCSA-2011-0298, FMCSA-2011-0299, FMCSA-2011-0366, FMCSA-2011-26690, FMCSA-2013-0021, FMCSA-2013-0022, FMCSA-2013-0025, FMCSA-2013-0027, FMCSA-2013-0029, FMCSA-2013-0165, FMCSA-2013-0167, FMCSA-2013-0168, FMCSA-2013-0169, FMCSA-2013-0170, FMCSA-2014-0003, FMCSA-2014-0007, FMCSA-2014-0296, FMCSA-2014-0297, FMCSA-2014-0299, FMCSA-2015-0048, FMCSA-2015-0049, FMCSA-2015-0053, FMCSA-2015-0055, FMCSA-2015-0056, FMCSA-2015-0070, FMCSA-2015-0344, FMCSA-2016-0213, FMCSA-2016-0214, FMCSA-2017-0014, FMCSA-2017-0018, FMCSA-2017-0020, FMCSA-2017-0022, FMCSA-2017-0023, FMCSA-2017-0024, FMCSA-2018-0209, FMCSA-2019-0004, FMCSA-2019-0006, FMCSA-2019-0013, FMCSA-2019-0014, FMCSA-2019-0015, FMCSA-2019-0019, or FMCSA-2020-0018 in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.



### B. Viewing Comments

To view comments go to [www.regulations.gov/](http://www.regulations.gov/), insert the docket number, FMCSA-1998-4334, FMCSA-1999-5578, FMCSA-1999-6156, FMCSA-2001-9561, FMCSA-2002-12844, FMCSA-2003-16241, FMCSA-2005-20560, FMCSA-2005-22194, FMCSA-2005-22727, FMCSA-2006-24783, FMCSA-2006-26653, FMCSA-2007-0017, FMCSA-2007-27333, FMCSA-2007-27897, FMCSA-2008-0398, FMCSA-2009-0121, FMCSA-2009-0303, FMCSA-2010-0187, FMCSA-2010-0354, FMCSA-2011-0010, FMCSA-2011-0024, FMCSA-2011-0057, FMCSA-2011-0092, FMCSA-2011-0102, FMCSA-2011-0142, FMCSA-2011-0189, FMCSA-2011-0298, FMCSA-2011-0299, FMCSA-2011-0366, FMCSA-2011-26690, FMCSA-2013-0021, FMCSA-2013-0022, FMCSA-2013-0025, FMCSA-2013-0027, FMCSA-2013-0029, FMCSA-2013-0165, FMCSA-2013-0167, FMCSA-2013-0168, FMCSA-2013-0169, FMCSA-2013-0170, FMCSA-2014-0003, FMCSA-2014-0007, FMCSA-2014-0296, FMCSA-2014-0297, FMCSA-2014-0299, FMCSA-2015-0048, FMCSA-2015-0049, FMCSA-2015-0053, FMCSA-2015-0055, FMCSA-2015-0056, FMCSA-2015-0070, FMCSA-2015-0072, FMCSA-2015-0344, FMCSA-2016-0213, FMCSA-2016-0214, FMCSA-2017-0014, FMCSA-2017-0018, FMCSA-2017-0020, FMCSA-2017-0022, FMCSA-2017-0023, FMCSA-2017-0024, FMCSA-2018-0209, FMCSA-2019-0004, FMCSA-2019-0006, FMCSA-2019-0013, FMCSA-2019-0014, FMCSA-2019-0015, FMCSA-2019-0019, or FMCSA-2020-0018 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

### C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to

[www.regulations.gov](http://www.regulations.gov/), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

### II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 109 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

### III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

### IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 109 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 63 FR 66226; 64 FR 27027;

64 FR 54948; 66 FR 30502; 67 FR 68719; 68 FR 61857; 70 FR 17504; 70 FR 57353; 70 FR 71884; 71 FR 32183; 72 FR 8417; 72 FR 12666; 72 FR 39879; 72 FR 67340; 74 FR 7097; 74 FR 26461; 74 FR 60022; 75 FR 47883; 75 FR 72863; 76 FR 9856; 76 FR 17481; 76 FR 18824; 76 FR 25766; 76 FR 29022; 76 FR 49528; 76 FR 55465; 76 FR 64169; 76 FR 70213; 76 FR 73769; 77 FR 17117; 78 FR 10251; 78 FR 12815; 78 FR 20376; 78 FR 24798; 78 FR 34143; 78 FR 47818; 78 FR 63302; 78 FR 64271; 78 FR 64274; 78 FR 67454; 79 FR 14571; 79 FR 38659; 79 FR 58856; 79 FR 63211; 79 FR 73397; 80 FR 26139; 80 FR 31636; 80 FR 40122; 80 FR 44188; 80 FR 59230; 80 FR 67476; 80 FR 70060; 80 FR 76345; 82 FR 12678; 82 FR 13187; 82 FR 17736; 82 FR 24430; 82 FR 34564; 82 FR 37504; 82 FR 43647; 82 FR 58262; 84 FR 2323; 84 FR 5550; 84 FR 11859; 84 FR 46088; 84 FR 47050; 84 FR 52160; 84 FR 69814; 84 FR 72114). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of January and are discussed below. As of January 3, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 87 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (63 FR 66226; 64 FR 27027; 64 FR 54948; 66 FR 30502; 67 FR 68719; 68 FR 61857; 70 FR 17504; 70 FR 57353; 71 FR 32183; 72 FR 8417; 72 FR 12666; 72 FR 39879; 74 FR 7097; 74 FR 26461; 75 FR 47883; 75 FR 72863; 76 FR 9856; 76 FR 17481; 76 FR 18824; 76 FR 25766; 76 FR 29022; 76 FR 49528; 76 FR 55465; 76 FR 64169; 77 FR 17117; 78 FR 10251; 78 FR 12815; 78 FR 20376; 78 FR 24798; 78 FR 34143; 78 FR 47818; 78 FR 63302; 78 FR 64274; 78 FR 67454; 79 FR 14571; 79 FR 38659; 79 FR 58856; 79 FR 63211; 79 FR 73397; 80 FR 26139; 80 FR 31636; 80 FR 40122; 80 FR 44188; 80 FR 59230; 80 FR 67476; 80 FR 70060;

82 FR 12678; 82 FR 13187; 82 FR 17736;  
82 FR 24430; 82 FR 34564; 82 FR 37504;  
82 FR 43647; 84 FR 2323; 84 FR 5550;  
84 FR 11859; 84 FR 46088; 84 FR 47050;  
84 FR 52160):

Thomas E. Adams (IN)  
William D. Amberman (PA)  
Lawrence A. Angle (MO)  
Robert F. Anneheim (NC)  
Luis A. Bejarano (AZ)  
Eugenio V. Bermudez (MA)  
Johnny A. Bingham (NC)  
Russell A. Bolduc (CT)  
Jason W. Bowers (OR)  
Kenneth E. Bross (MO)  
Rickie L. Brown (MS)  
Stacey J. Buckingham (ID)  
Robert M. Cassell, Jr. (NC)  
Julian Collins (GA)  
Duane C. Conway (NV)  
Andrew R. Cook (VT)  
Thomas R. Crocker (SC)  
Thomas W. Crouch (IN)  
Jeffrey S. Daniel (VA)  
John J. Davis (SC)  
Walter C. Dean, Sr. (AL)  
Gerald S. Dennis (IA)  
Brad M. Donald (MI)  
Dennis C. Edler (PA)  
Denise M. Engle (GA)  
Eric Esplin (UT)  
Tomie L. Estes (MO)  
Steven L. Forristall (WI)  
John A. Gartner (MN)  
William K. Gullett (KY)  
Ahmed M. Gutale (MN)  
Michael D. Halferty (IA)  
John R. Harper (KS)  
Steven E. Hayes (IN)  
Richard Healy (MD)  
Dustin K. Heimbach (PA)  
Dennis H. Heller (KS)  
Philip E. Henderson (MO)  
Shane M. Holum (WA)  
Michael D. Judy (KS)  
Jeffrey A. Keefer (OH)  
Purvis W. Kills Enemy At Night (SD)  
Jay D. Labrum (UT)  
Edward H. Lampe (OR)  
Charles H. Lefew (VA)  
Stephen C. Linardos (FL)  
Daniel C. Linares (CA)  
Lonnie Lomax, Jr. (IL)  
Darrel R. Martin (MD)  
Frederick L. Mc Curry (VA)  
Keith W. McNabb (ID)  
Dionicio Mendoza (TX)  
Ronald S. Milkowski (NJ)  
Pablo R. Murillo (TX)  
Timothy W. Nappier (MI)  
Tobias G. Olsen (ND)  
James A. Parker (PA)  
John R. Price (AR)  
Kenneth A. Reddick (PA)  
Francis D. Reginald (NJ)  
Steven P. Richter (MN)  
Danilo A. Rivera (MD)  
Michael J. Robinson (WV)

Esequiel Rodriguez, Jr. (TX)  
Jonathan C. Rollings (IA)  
James R. Rupert (CA)  
Craig R. Saari (MN)  
Joaquin A. Sandoval (OR)  
Eugene D. Self, Jr. (NC)  
Michael L. Sherum (AL)  
Levi A. Shetler (OH)  
David W. Skillman (WA)  
Boyd D. Stamey (NC)  
Robert D. Steele (WA)  
Neil G. Sturges (NY)  
Jeffrey R. Swett (SC)  
James B. Taflinger, Sr. (VA)  
Lee T. Taylor (FL)  
Steven L. Thomas (IN)  
Dale A. Torkelson (WI)  
Herman D. Truwell (FL)  
Tristan A. Twito (TX)  
Jeffrey Waterbury (NY)  
Daniel A. Wescott (CO)  
Gregory A. Woodward (OR)  
Walter M. Yohn, Jr. (AL)  
William E. Zezulka (MN)

The drivers were included in docket numbers FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–1999–6156; FMCSA–2001–9561; FMCSA–2002–12844; FMCSA–2003–16241; FMCSA–2005–20560; FMCSA–2005–22194; FMCSA–2006–24783; FMCSA–2006–26653; FMCSA–2007–27333; FMCSA–2007–27897; FMCSA–2008–0398; FMCSA–2009–0121; FMCSA–2010–0187; FMCSA–2010–0354; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2011–0366; FMCSA–2011–26690; FMCSA–2013–0021; FMCSA–2013–0022; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0003; FMCSA–2014–0007; FMCSA–2014–0296; FMCSA–2014–0297; FMCSA–2014–0299; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0072; FMCSA–2016–0213; FMCSA–2016–0214; FMCSA–2017–0014; FMCSA–2017–0018; FMCSA–2017–0020; FMCSA–2017–0022; FMCSA–2017–0023; FMCSA–2018–0209; FMCSA–2019–0004; FMCSA–2019–0006; FMCSA–2019–0013; FMCSA–2019–0014; FMCSA–2019–0015. Their exemptions are applicable as of January 3, 2022 and will expire on January 3, 2024.

As of January 5, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision

requirement in the FMCSRs for interstate CMV drivers (76 FR 70213):  
George G. Ulferts, Jr. (IA)

The driver was included in docket number FMCSA–2011–0298. The exemption is applicable as of January 5, 2022 and will expire on January 5, 2024.

As of January 8, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (72 FR 67340; 80 FR 76345):

Wayne A. Burnett (NC)  
Thomas E. Gross (PA)  
Steven G. Hall (NC)  
Jason Huddleston (TX)

The drivers were included in docket numbers FMCSA–2007–0017; FMCSA–2015–0344. Their exemptions are applicable as of January 8, 2022 and will expire on January 8, 2024.

As of January 11, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (82 FR 58262):  
Christopher T. Peevyhouse (TN)

The driver was included in docket number FMCSA–2017–0024. The exemption is applicable as of January 11, 2022 and will expire on January 11, 2024.

As of January 15, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 64271):  
Glenn H. Lewis (OH); and  
Roy A. Whitaker (TX)

The drivers were included in docket number FMCSA–2013–0167. Their exemptions are applicable as of January 15, 2022 and will expire on January 15, 2024.

As of January 22, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (84 FR 69814):  
Derrick A. Robinson (AL)

The driver was included in docket number FMCSA–2020–0018. The exemption is applicable as of January 22, 2022 and will expire on January 22, 2024.

As of January 23, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has

satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 67454): Leonard A. Martin (NV)

The driver was included in docket number FMCSA–2013–0170. The exemption is applicable as of January 23, 2022 and will expire on January 23, 2024.

As of January 24, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 73769): Mark A. Ferris (IA)

Mark A. Ferris (IA)

The driver was included in docket number FMCSA–2011–0299. The exemption is applicable as of January 24, 2022 and will expire on January 24, 2024.

As of January 27, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (70 FR 71884): Jason L. Light (ID)

The drivers were included in docket number FMCSA–2005–22727. The exemption is applicable as of January 27, 2022 and will expire on January 27, 2024.

As of January 28, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (74 FR 60022): Donald E. Halvorson (NM); and Phillip J. Locke (CO)

The drivers were included in docket number FMCSA–2009–0303. Their exemptions are applicable as of January 28, 2022 and will expire on January 28, 2024.

As of January 29, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 67454):

Calvin J. Barbour (NY)  
Jamie D. Daniels (IA)  
Randy G. Kinney (IL)  
Hector Marquez (TX)

The drivers were included in docket number FMCSA–2013–0170. Their exemptions are applicable as of January 29, 2022 and will expire on January 29, 2024.

As of January 30, 2022, and in accordance with 49 U.S.C. 31136(e) and

31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (84 FR 72114):

Brian K. Boyd (TX)  
Vincent M. Najera (CA)  
Jameson A. Otto (TX)  
Jose M. Vasquez (NY)

The drivers were included in docket number FMCSA–2019–0019. Their exemptions are applicable as of January 30, 2022 and will expire on January 30, 2024.

#### Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

#### V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

#### VI. Conclusion

Based upon its evaluation of the 109 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b),

each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–26795 Filed 12–9–21; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0015]

#### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 13 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Comments must be received on or before January 10, 2022.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2021–0015 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov/](http://www.regulations.gov/), insert the docket number, FMCSA–2021–0015, in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

*A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2021-0015), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to [www.regulations.gov/docket?D=FMCSA-2021-0015](http://www.regulations.gov/docket?D=FMCSA-2021-0015). Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click the "Comment" button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

*B. Viewing Comments*

To view comments go to [www.regulations.gov](http://www.regulations.gov). Insert the docket number, FMCSA-2021-0015, in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West

Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

*C. Privacy Act*

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

**II. Background**

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 13 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the

enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century, Public Law 105-178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at [www.regulations.gov/docket?D=FMCSA-1998-3637](http://www.regulations.gov/docket?D=FMCSA-1998-3637).

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.<sup>1</sup> The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the

<sup>1</sup> A thorough discussion of this issue may be found in a FHWA final rule published in the **Federal Register** on March 26, 1996 and available on the internet at <https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf>.

probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," *Journal of American Statistical Association*, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

### III. Qualifications of Applicants

#### *Jacob J. Bell*

Mr. Bell, 24, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2021, his optometrist stated, "Visually safe to operate a commercial vehicle." Mr. Bell reported that he has driven straight trucks for 5 years, accumulating 15,000 miles, tractor-trailer combinations for 5 years, accumulating 100,000 miles, and buses for 3 years, accumulating 3,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Robert F. Fullwood*

Mr. Fullwood, 35, has had glaucoma in his right eye since 2011. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2021, his optometrist stated, "Although patient has long standing reduced vision in the right eye, his best corrected vision in the left eye (20/20), his full extent of color vision in the left eye, and his binocular field of vision are adequate to operate a commercial vehicle." Mr. Fullwood reported that he has driven straight trucks for 3 years, accumulating 51,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Glen T. Garrabrant*

Mr. Garrabrant, 59, has had a prosthetic in his right eye due to a traumatic incident in 1980. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2021, his optometrist stated, "It is my opinion that the health and vision of Mr. Garrabrant's left eye at this time is good

and has been stable for years. During this time, it did not interfere with his ability to operate a commercial motor vehicle." Mr. Garrabrant reported that he has driven straight trucks for 35 years, accumulating 24,500 miles, and tractor-trailer combinations for 10 years, accumulating 900,000. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Lloyd M. Hicks*

Mr. Hicks, 52, has had a retinal detachment in his left eye since 2006. The visual acuity in his right eye is 20/40, and in his left eye, hand motion. Following an examination in 2021, his optometrist stated, "Given the understanding that his vision is limited to primarily his right eye only, the right eye is impaired from a peripheral field of view and his central acuity is adequate to meet even basic driving requirements, Mr. Hicks does have sufficient visual capacity to safely operate his vehicle at this time." Mr. Hicks reported that he has driven straight trucks for 35 years, accumulating 1.05 million miles. He holds an operator's license from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Kyle M. Innella*

Mr. Innella, 49, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/80, and in his left eye, 20/20. Following an examination in 2021, his ophthalmologist stated, "It is my medical opinion that Mr. Innella has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Innella reported that he has driven straight trucks for 29 years, accumulating 246,500 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Tyraine Jackson*

Mr. Jackson, 47, has a central scotoma in his right eye due to a traumatic incident in 1991. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2021, his ophthalmologist stated, "Based on the two examinations available for me to review done in this office on 6/3/2021 and 6/17/2021 I believe the patient's vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Jackson reported that he has driven

straight trucks for 3 years, accumulating 84,000 miles, and tractor-trailer combinations for 3 years, accumulating 84,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Maris I. Kretsu*

Mr. Kretsu, 36, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2021, his optometrist stated, "All the testing concludes that Mr. Kretsu has sufficient vision to obtain a commercial driver's license and drive a commercial vehicle." Mr. Kretsu reported that he has driven straight trucks for 5 years, accumulating 400,000 miles. He holds an operator's license from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Ellis R. Martin*

Mr. Martin, 73, has retinal scarring in his right eye since childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2021, his optometrist stated, "In my medical opinion, patient demonstrates sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Martin reported that he has driven straight trucks for 40 years, accumulating 360,000 miles. He holds an operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Jerred R. Murray*

Mr. Murray, 32, had an enucleation of his left eye due to a traumatic incident in 2015. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2021, his optometrist stated, "Given that his vision has been stable since 2015 and he has previously driven a commercial vehicle since the loss of his left eye, it is my opinion that he may be well adapted to his vision and may be able to continue to be capable of driving a commercial vehicle despite the restricted field." Mr. Murray reported that he has driven straight trucks for 5 years, accumulating 112,500 miles, and tractor-trailer combinations for 1 year, accumulating 10,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Moises Perez*

Mr. Perez, 44, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2021, his ophthalmologist stated, "It is my opinion that his vision is sufficient to perform the driving tasks required to operator [sic] a commercial vehicle." Mr. Perez reported that he has driven straight trucks for 3 years, accumulating 39,000 miles. He holds an operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Jake Quillen*

Mr. Quillen, 63, has ischemic optic neuropathy in his right eye due to a stroke in 2017. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2021, his optometrist stated, "If these are true, Jake meets the federal exemptions to be able to drive a commercial vehicle because of his vision/field of vision in his left eye. Due to this, I can recommend Mr. Quillen is capable of driving a commercial vehicle." Mr. Quillen reported that he has driven straight trucks for 2 years, accumulating 20,000 miles, and tractor-trailer combinations for 35 years, accumulating 3.3 million miles. He holds a Class AM CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*David S. Rosen*

Mr. Rosen, 65, has had a macular pucker in his left eye since 2015. The visual acuity in his right eye is 20/30, and in his left eye, 20/50. Following an examination in 2021, his optometrist stated, "I certify patient, David Rosen, has sufficient vision to perform the driving tasks to operate a commercial vehicle." Mr. Rosen reported that he has driven buses for 4 years, accumulating 40,000 miles. He holds a Class B CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Robert C. Rucker*

Mr. Rucker, 38, has a retinal detachment in his left eye due to a traumatic incident in 1996. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2021, his optometrist stated, "In my medical opinion, I feel Mr. Rucker has sufficient vision to perform the driving tasks to operate a commercial vehicle." Mr. Rucker

reported that he has driven straight trucks for 9 years, accumulating 90,000 miles. He holds a Class B CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

**IV. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the **DATES** section of the notice.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2021-26794 Filed 12-9-21; 8:45 am]

**BILLING CODE 4910-EX-P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[Docket No. FMCSA-1999-5578; FMCSA-1999-5748; FMCSA-2000-7006; FMCSA-2000-7918; FMCSA-2001-9561; FMCSA-2001-10578; FMCSA-2002-11426; FMCSA-2002-12844; FMCSA-2002-13411; FMCSA-2003-14223; FMCSA-2003-14504; FMCSA-2004-17195; FMCSA-2005-20560; FMCSA-2005-21254; FMCSA-2005-21711; FMCSA-2005-22194; FMCSA-2006-26066; FMCSA-2007-25246; FMCSA-2007-27333; FMCSA-2007-27897; FMCSA-2007-29019; FMCSA-2008-0106; FMCSA-2008-0266; FMCSA-2009-0154; FMCSA-2009-0206; FMCSA-2010-0161; FMCSA-2010-0287; FMCSA-2010-0354; FMCSA-2010-0372; FMCSA-2010-0385; FMCSA-2011-0057; FMCSA-2011-0092; FMCSA-2011-0124; FMCSA-2011-0140; FMCSA-2011-0141; FMCSA-2011-0142; FMCSA-2011-0189; FMCSA-2011-26690; FMCSA-2012-0040; FMCSA-2012-0161; FMCSA-2012-0337; FMCSA-2012-0338; FMCSA-2013-0021; FMCSA-2013-0022; FMCSA-2013-0025; FMCSA-2013-0027; FMCSA-2013-0028; FMCSA-2013-0029; FMCSA-2013-0030; FMCSA-2013-0165; FMCSA-2013-0166; FMCSA-2013-0168; FMCSA-2013-0169; FMCSA-2014-0005; FMCSA-2014-0010; FMCSA-2014-0298; FMCSA-2014-0300; FMCSA-2014-0301; FMCSA-2014-0302; FMCSA-2014-0304; FMCSA-2014-0305; FMCSA-2015-0048; FMCSA-2015-0049; FMCSA-2015-0052; FMCSA-2015-0055; FMCSA-2015-0056; FMCSA-2015-0071; FMCSA-2015-0072; FMCSA-2015-0347; FMCSA-2016-0025; FMCSA-2016-0030; FMCSA-2016-0210; FMCSA-2016-0212; FMCSA-2016-0213; FMCSA-2017-0016; FMCSA-2017-0017; FMCSA-2017-0018; FMCSA-2017-0019; FMCSA-2017-0020; FMCSA-2017-0022; FMCSA-2017-0023; FMCSA-2018-0010; FMCSA-2018-0013; FMCSA-2018-0015; FMCSA-2018-0018; FMCSA-2018-0207; FMCSA-2018-0209; FMCSA-2019-0005; FMCSA-2019-0006; FMCSA-2019-0008; FMCSA-2019-0009; FMCSA-2019-0014; FMCSA-2019-0015]

**Qualification of Drivers; Exemption Applications; Vision**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 156 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below

and will expire on the dates provided below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@dot.gov), FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

*A. Viewing Comments*

To view comments go to [www.regulations.gov](http://www.regulations.gov). Insert the docket number, FMCSA-1999-5578, FMCSA-1999-5748, FMCSA-2000-7006, FMCSA-2000-7918, FMCSA-2001-9561, FMCSA-2001-10578, FMCSA-2002-11426, FMCSA-2002-12844, FMCSA-2002-13411, FMCSA-2003-14223, FMCSA-2003-14504, FMCSA-2004-17195, FMCSA-2005-20560, FMCSA-2005-21254, FMCSA-2005-21711, FMCSA-2005-22194, FMCSA-2006-26066, FMCSA-2007-25246, FMCSA-2007-27333, FMCSA-2007-27897, FMCSA-2007-29019, FMCSA-2008-0106, FMCSA-2008-0266, FMCSA-2009-0154, FMCSA-2009-0206, FMCSA-2010-0161, FMCSA-2010-0287, FMCSA-2010-0354, FMCSA-2010-0372, FMCSA-2010-0385, FMCSA-2011-0057, FMCSA-2011-0092, FMCSA-2011-0124, FMCSA-2011-0140, FMCSA-2011-0141, FMCSA-2011-0142, FMCSA-2011-0189, FMCSA-2011-26690, FMCSA-2012-0040, FMCSA-2012-0161, FMCSA-2012-0337, FMCSA-2012-0338, FMCSA-2013-0021, FMCSA-2013-0022, FMCSA-2013-0025, FMCSA-2013-0027, FMCSA-2013-0028, FMCSA-2013-0029, FMCSA-2013-0030, FMCSA-2013-0165, FMCSA-2013-0166, FMCSA-2013-0168, FMCSA-2013-0169, FMCSA-2014-0005, FMCSA-2014-0010, FMCSA-2014-0298, FMCSA-2014-0300, FMCSA-2014-0301, FMCSA-2014-0302, FMCSA-2014-0304, FMCSA-2014-0305, FMCSA-2015-0048, FMCSA-2015-0049, FMCSA-2015-0052, FMCSA-2015-0055, FMCSA-2015-0056, FMCSA-2015-0071, FMCSA-2015-0072, FMCSA-2015-0347, FMCSA-2016-0025, FMCSA-2016-0030, FMCSA-2016-0210, FMCSA-2016-0212, FMCSA-2016-0213, FMCSA-2017-0016, FMCSA-2017-0017, FMCSA-2017-0018, FMCSA-2017-0019,

FMCSA-2017-0020, FMCSA-2017-0022, FMCSA-2017-0023, FMCSA-2018-0010, FMCSA-2018-0013, FMCSA-2018-0015, FMCSA-2018-0018, FMCSA-2018-0207, FMCSA-2018-0209, FMCSA-2019-0005, FMCSA-2019-0006, FMCSA-2019-0008, FMCSA-2019-0009, FMCSA-2019-0014, or FMCSA-2019-0015 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

*B. Privacy Act*

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

**II. Background**

On October 29, 2021, FMCSA published a notice announcing its decision to renew exemptions for 156 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (86 FR 60086). The public comment period ended on November 29, 2021, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian

in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

**III. Discussion of Comments**

FMCSA received no comments in this proceeding.

**IV. Conclusion**

Based on its evaluation of the 156 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

As of December 3, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 140 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 40404, 64 FR 66962, 65 FR 20245, 65 FR 57230, 65 FR 66286, 66 FR 13825, 66 FR 30502, 66 FR 41654, 66 FR 53826, 66 FR 63289, 66 FR 66966, 67 FR 57266, 67 FR 68719, 67 FR 76439, 68 FR 2629, 68 FR 10298, 68 FR 10301, 68 FR 13360, 68 FR 19596, 68 FR 19598, 68 FR 33570, 68 FR 44837, 68 FR 64944, 68 FR 69434, 69 FR 17263, 69 FR 31447, 69 FR 52741, 69 FR 71100, 70 FR 7545, 70 FR 12265, 70 FR 16886, 70 FR 17504, 70 FR 25878, 70 FR 30997, 70 FR 30999, 70 FR 41811, 70 FR 46567, 70 FR 48797, 70 FR 61493, 70 FR 67776, 70 FR 74102, 71 FR 27033, 71 FR 53489, 71 FR 63379, 72 FR 180, 72 FR 1050, 72 FR 1051, 72 FR 1053, 72 FR 7812, 72 FR 9397, 72 FR 11426, 72 FR 12666, 72 FR 18726, 72 FR 25831, 72 FR 27624, 72 FR 28093, 72 FR 39879, 72 FR 52419, 72 FR 54971, 72 FR 58362, 72 FR 62896, 72 FR 64273, 72 FR 67344, 73 FR 35197, 73 FR 36955, 73 FR 48275, 73 FR 51336, 73 FR 51689, 73 FR 63047, 73 FR 76440, 73 FR 78423, 74 FR 6689, 74 FR 8302, 74 FR 11991, 74 FR 15586, 74 FR 20253, 74 FR 20523, 74 FR 23472, 74 FR 34395, 74 FR 37295, 74 FR 41971, 74 FR 43217, 74 FR 43221, 74 FR 48343, 74 FR 49069, 74 FR 57551, 74 FR 57553, 74 FR 62632, 75 FR 36779, 75 FR 39725, 75 FR 44051, 75 FR 52062, 75 FR 61833, 75 FR 66423, 75 FR 69737, 75 FR 72863, 75 FR 77942, 75 FR 79083, 75 FR 80887, 76 FR 1499, 76 FR 2190, 76 FR 5425, 76 FR 7894, 76 FR 9859, 76 FR 11215, 76 FR 12216, 76 FR 17483, 76 FR 18824, 76 FR 20078, 76 FR 21796, 76 FR 25762, 76 FR 25766, 76 FR 29024, 76 FR 29026, 76 FR 32017, 76 FR 34136, 76 FR 37169, 76 FR 37885, 76 FR 40445, 76 FR 44652, 76 FR 49528, 76 FR 50318, 76 FR 53708, 76 FR 53710, 76 FR 54530, 76 FR 55463, 76 FR 55465, 76 FR 61143, 76 FR 62143, 76 FR 66123, 76 FR 67246, 76 FR 70212, 76 FR 70215, 77 FR 23799, 77 FR 33558, 77 FR 38384, 77 FR 41879, 77 FR 46153, 77 FR 52389, 77 FR 52391, 77 FR 56262, 77 FR 70534,

77 FR 74273, 77 FR 74731, 77 FR 74733,  
77 FR 74734, 77 FR 76167, 78 FR 8689,  
78 FR 9772, 78 FR 10251, 78 FR 12811,  
78 FR 12815, 78 FR 12822, 78 FR 14410,  
78 FR 16762, 78 FR 18667, 78 FR 20376,  
78 FR 20379, 78 FR 22596, 78 FR 22602,  
78 FR 24798, 78 FR 26106, 78 FR 27281,  
78 FR 30954, 78 FR 32708, 78 FR 34141,  
78 FR 34143, 78 FR 37270, 78 FR 41188,  
78 FR 41975, 78 FR 46407, 78 FR 47818,  
78 FR 52602, 78 FR 56986, 78 FR 56993,  
78 FR 63307, 78 FR 64280, 78 FR 77782,  
78 FR 78477, 79 FR 4531, 79 FR 24298,  
79 FR 27365, 79 FR 27681, 79 FR 35218,  
79 FR 38649, 79 FR 38661, 79 FR 46153,  
79 FR 46300, 79 FR 51642, 79 FR 51643,  
79 FR 64001, 79 FR 65760, 79 FR 69985,  
79 FR 73687, 79 FR 74168, 80 FR 2473,  
80 FR 3305, 80 FR 3308, 80 FR 6162,  
80 FR 7678, 80 FR 8751, 80 FR 8927, 80  
FR 9304, 80 FR 12248, 80 FR 12251, 80  
FR 14220, 80 FR 14223, 80 FR 15863,  
80 FR 16500, 80 FR 16502, 80 FR 18693,  
80 FR 18696, 80 FR 20562, 80 FR 22773,  
80 FR 25766, 80 FR 26139, 80 FR 26320,  
80 FR 29149, 80 FR 29152, 80 FR 29154,  
80 FR 31636, 80 FR 31640, 80 FR 33007,  
80 FR 33011, 80 FR 35699, 80 FR 36395,  
80 FR 37718, 80 FR 41548, 80 FR 44188,  
80 FR 45573, 80 FR 48402, 80 FR 48404,  
80 FR 48409, 80 FR 48411, 80 FR 48413,  
80 FR 49302, 80 FR 50917, 80 FR 53383,  
80 FR 59225, 80 FR 59230, 80 FR 62161,  
80 FR 63869, 80 FR 67472, 81 FR 1284,  
81 FR 1474, 81 FR 11642, 81 FR 21647,  
81 FR 28138, 81 FR 45214, 81 FR 48493,  
81 FR 66726, 81 FR 71173, 81 FR 72664,  
81 FR 80161, 81 FR 81230, 81 FR 86063,  
81 FR 90050, 81 FR 94013, 81 FR 96165,  
81 FR 96180, 81 FR 96196, 82 FR 12683,  
82 FR 13043, 82 FR 13048, 82 FR 13187,  
82 FR 15277, 82 FR 18818, 82 FR 18949,  
82 FR 18954, 82 FR 20962, 82 FR 22379,  
82 FR 23712, 82 FR 24430, 82 FR 28734,  
82 FR 32919, 82 FR 33542, 82 FR 34564,  
82 FR 35043, 82 FR 35050, 82 FR 37499,  
82 FR 37504, 82 FR 43647, 82 FR 47295,  
82 FR 47296, 82 FR 47309, 82 FR 47312,  
83 FR 2289, 83 FR 2306, 83 FR 3861, 83  
FR 4537, 83 FR 18644, 83 FR 28332, 83  
FR 28335, 83 FR 28342, 83 FR 34661,  
83 FR 34667, 83 FR 40638, 83 FR 40648,  
83 FR 53724, 83 FR 53727, 83 FR 53732,  
83 FR 56140, 83 FR 56902, 84 FR 2309,  
84 FR 2311, 84 FR 2314, 84 FR 2323, 84  
FR 2326, 84 FR 2328, 84 FR 10389, 84  
FR 11859, 84 FR 12665, 84 FR 16320,  
84 FR 16333, 84 FR 16336, 84 FR 21393,  
84 FR 21397, 84 FR 21401, 84 FR 23629,  
84 FR 27685, 84 FR 27688, 84 FR 47047,  
84 FR 47050, 84 FR 47057, 84 FR 52160,  
84 FR 52166, 84 FR 58448, 84 FR 58450,  
84 FR 58453, 84 FR 66442, 84 FR 66444,  
85 FR 4764):

Brian K. Aldridge (OH)  
Michael T. Allen (NV)  
Darrell G. Anthony (TX)  
Clarton D. Avis (KY)  
Eleazar R. Balli (TX)  
Donald A. Becker (MI)  
Linda L. Billings (NV)  
Robert W. Blankenship (CA)  
Keith A. Bliss (NY)  
Christopher W. Brim (TN)  
Justin C. Bruchman (WI)  
David A. Buchanan (SC)  
Timothy V. Burke (CO)  
Garry D. Burkholder (PA)  
Robert J. Burns (KY)  
Nathan J. Bute (IN)  
Ricky D. Cain (NM)  
Clifford D. Carpenter (MO)  
Robert A. Casson (KY)  
Todd A. Chapman (NC)  
Stephen M. Cook (PA)  
David A. Cooper (WV)  
Gregory L. Cooper (PA)  
Peter D. Costas (NY)  
Timothy J. Curran (CA)  
Brian W. Curtis (IL)  
Marvin R. Daly (SC)  
Terry L. Daneau (NH)  
Erik R. Davis (GA)  
Mark P. Davis (ME)  
Chris M. DeJong (NM)  
Nicholas M. Deschepper (SD)  
Phyllis A. Dodson (IN)  
Ronald W. Doskocil (TX)  
Sonya M. Duff (IN)  
Brian G. Dvorak (IL)  
David L. Ellis (OK)  
Larry E. Emanuel (FL)  
David L. Erickson (SD)  
Jonathan G. Estabrook (MA)  
John F. Ferguson (PA)  
Saul E. Fierro (AZ)  
Bobby C. Floyd (TN)  
Kevin K. Friedel (NY)  
Claudia E. Gerez-Betancourt (TX)  
Mark E. Gessner (FL)  
Anthony A. Gibson (IL)  
Nirmal S. Gill (CA)  
Jonathen M. Gilligan (NY)  
Robert A. Goerl, Jr. (PA)  
Elias Gomez, Jr. (TX)  
Efrain Gonzalez (UT)  
Ismael Gonzalez (NJ)  
Juan O. Gonzalez (TX)  
Luis Gonzalez Marin (NJ)  
James P. Greene (NY)  
Marc C. Grooms (MO)  
Richard G. Gruber (SC)  
Juan M. Guerrero (TX)  
Gary R. Gutschow (WI)  
Bradley O. Hart (UT)  
Benny D. Hatton, Jr. (NY)  
Dean R. Hawley (NC)  
Harry P. Henning (PA)  
Michael A. Hershberger (OH)  
Daniel W. Hodge (TN)  
Ronald Holshouser (MO)  
Lloyd M. Hoover (PA)  
John R. Horst (PA)  
James O. Howard (CA)  
Mearl C. Kennedy (OH)  
Cody A. Keys (OK)  
Scott A. Lambertson (MN)  
Carmelo A. Lana (NJ)  
Anthony D. Lang (NH)  
Keith A. Lang (TX)  
Robert T. Lantry (MA)  
Herbert S. Lear (PA)  
Edward J. Lewis (UT)  
Robert N. Lewis (OH)  
Bruce A. Lloyd (MA)  
Scott A. MacPherson (MA)  
Alex P. Makhanov (WA)  
Joseph L. Mast (OR)  
David S. Mayo (VA)  
Jason L. McBride (MI)  
Steven J. McLain (TN)  
Joseph McTear (TX)  
Clarence M. Miles (OK)  
Rodney M. Mimbs (GA)  
Derrick P. Moore (MN)  
Dennis L. Morgan (WA)  
Charles J. Morman (FL)  
Richard N. Moyer, Jr. (PA)  
William F. Nickel, V (OR)  
Kevin J. O'Donnell (IL)  
Wayne E. Page (NC)  
Harold L. Pearsall (PA)  
Luis M. Perez-Francisco (NJ)  
Richard E. Perry (CA)  
James R. Petre (MD)  
Lonnie D. Prejean (TX)  
Phillip M. Pridgen, Sr. (MD)  
Joseph J. Pudlik (IL)  
Matias P. Quintanilla (CA)  
Enoc Ramos III (TX)  
Alonzo K. Rawls (NJ)  
Rickey H. Reeder (TN)  
Franklin P. Reigle III (MD)  
Kevin L. Riddle (FL)  
Julio Rivera (FL)  
Alvaro F. Rodriguez (TX)  
Roger D. Rogers (PA)  
Andrew H. Rusk (IL)  
Daniel C. Sagert (WI)  
Andrew R. Sampson (MD)  
Christopher J. Schmidt (WI)  
Richard D. Shryock (MO)  
Ernesto Silva (NM)  
Manjinder Singh (WA)  
James E. Smith (FL)  
James L. Stacy (AR)  
Larry D. Steiner (MN)  
Joseph D. Stenberg (MT)  
Greg C. Stilson (WY)  
Benjamin A. Stone (VA)  
David T. Tann (NC)  
Timothy R. Tedford (IL)  
Michael J. Thane (OH)  
Tommy Thomas (CA)  
John J. Tilton (NH)  
Daniel L. Troop (MI)  
Arnulfo J. Valenzuela (TX)  
Stephen W. Verrette (MI)  
Daniel E. Watkins (FL)  
Marcus R. Watkins (TX)  
Paul B. Williams (NY)  
Thomas W. Workman (IL)  
John C. Young (VA)  
Bradford C. Zipse (WI)

The drivers were included in docket numbers FMCSA-1999-5748, FMCSA-



2000–7006, FMCSA–2000–7918, FMCSA–2001–9561, FMCSA–2001–10578, FMCSA–2002–12844, FMCSA–2002–13411, FMCSA–2003–14223, FMCSA–2003–14504, FMCSA–2004–17195, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2006–26066, FMCSA–2007–25246, FMCSA–2007–27333, FMCSA–2007–27897, FMCSA–2007–29019, FMCSA–2008–0106, FMCSA–2008–0266, FMCSA–2009–0154, FMCSA–2009–0206, FMCSA–2010–0161, FMCSA–2010–0287, FMCSA–2010–0354, FMCSA–2010–0372, FMCSA–2010–0385, FMCSA–2011–0057, FMCSA–2011–0092, FMCSA–2011–0124, FMCSA–2011–0140, FMCSA–2011–0141, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2012–0040, FMCSA–2012–0161, FMCSA–2012–0337, FMCSA–2012–0338, FMCSA–2013–0021, FMCSA–2013–0022, FMCSA–2013–0025, FMCSA–2013–0027, FMCSA–2013–0028, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0005, FMCSA–2014–0010, FMCSA–2014–0298, FMCSA–2014–0300, FMCSA–2014–0301, FMCSA–2014–0302, FMCSA–2014–0304, FMCSA–2014–0305, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0055, FMCSA–2015–0056, FMCSA–2015–0071, FMCSA–2015–0347, FMCSA–2016–0025, FMCSA–2016–0030, FMCSA–2016–0210, FMCSA–2016–0212, FMCSA–2016–0213, FMCSA–2017–0016, FMCSA–2017–0017, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0020, FMCSA–2017–0022, FMCSA–2017–0023, FMCSA–2018–0010, FMCSA–2018–0013, FMCSA–2018–0015, FMCSA–2018–0018, FMCSA–2018–0207, FMCSA–2018–0209, FMCSA–2019–0005, FMCSA–2019–0006, FMCSA–2019–0008, FMCSA–2019–0009, FMCSA–2019–0014, and FMCSA–2019–0015. Their exemptions were applicable as of December 3, 2021 and will expire on December 3, 2023.

As of December 5, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 64169, 76 FR 75943, 78 FR 65032, 80 FR 67481, 83 FR 2306, 85 FR 4764):

Kevin G. Clem (SD)

The driver was included in docket number FMCSA–2011–16690. The exemption was applicable as of December 5, 2021 and will expire on December 5, 2023.

As of December 6, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (70 FR 57353, 70 FR 72689, 72 FR 62897, 74 FR 60021, 76 FR 70210, 78 FR 66099, 80 FR 67481, 83 FR 2306, 85 FR 4764):

Thomas C. Meadows (NC)  
David A. Morris (TX)  
Richard P. Stanley (MA)  
Scott A. Tetter (IL)

The drivers were included in docket number FMCSA–2005–22194. Their exemptions were applicable as of December 6, 2021 and will expire on December 6, 2023.

As of December 15, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 70060, 81 FR 16265, 83 FR 2306, 85 FR 4764):

Kelly K. Kremer (OR); and  
Alton R. Young (MS)

The drivers were included in docket number FMCSA–2015–0072. Their exemptions are applicable as of December 15, 2021 and will expire on December 15, 2023.

As of December 17, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 62935, 78 FR 76395, 80 FR 67481, 83 FR 2306, 85 FR 4764):

Henry D. Smith (NC)

The driver was included in docket number FMCSA–2013–0166. The exemption is applicable as of December 17, 2021 and will expire on December 17, 2023.

As of December 24, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 63302, 78 FR 64274, 78 FR 77778, 78 FR 77780, 80 FR 67481, 83 FR 2306, 85 FR 4764):

Thomas G. Gholston (MS);  
Chad A. Miller (IA); and  
Janusz K. Wis (IL)

The drivers were included in docket numbers FMCSA–2013–0168 and FMCSA–2013–0169. Their exemptions are applicable as of December 24, 2021 and will expire on December 24, 2023.

As of December 27, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027, 64 FR 51568, 66 FR 53826, 66 FR 63289, 66 FR 66966, 67 FR 10471, 67 FR 19798, 68 FR 64944, 68 FR 69434, 69 FR 19611, 70 FR 53412, 70 FR 57353, 70 FR 67776, 70 FR 72689, 70 FR 74102, 74 FR 60021, 76 FR 75942, 78 FR 67452, 80 FR 67481, 83 FR 2306, 85 FR 4764):

Elmer E. Gockley (PA)  
Randall B. Laminack (TX)  
Robert W. Lantis (MT)  
Eldon Miles (IN)  
DeWayne Washington (NC)

The drivers were included in docket numbers FMCSA–1999–5578, FMCSA–2001–10578, FMCSA–2002–11426, and FMCSA–2005–22194. Their exemptions are applicable as of December 27, 2021 and will expire on December 27, 2023.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2021–26797 Filed 12–9–21; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA–2021–0102]

#### Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on October 11, 2021, the Golden Gate Railroad Museum (GGRM) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 230.17, *One thousand four hundred seventy-two (1472) service day inspection*. FRA assigned the petition Docket Number FRA–2021–0102.

For locomotive #2472, GGRM requests to extend the period in which the 1472

service day inspection must be completed for one year until June 1, 2023. GGRM states that the annual inspection of #2472 was completed, but the extension would allow GGRM to recover from schedule delays and revenue losses caused by the COVID-19 pandemic.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.

Communications received by January 24, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of [www.regulations.gov](http://www.regulations.gov).

Issued in Washington, DC.

**John Karl Alexy,**

*Associate Administrator for Railroad Safety,  
Chief Safety Officer.*

[FR Doc. 2021-26721 Filed 12-9-21; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2021-0082]

#### Notice of Availability of a Final General Conformity Determination for the California High-Speed Rail System, Burbank to Los Angeles Section

**AGENCY:** Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** FRA is issuing this notice to advise the public that it is issuing a Final General Conformity Determination (FCD) for the Burbank to Los Angeles Section of the California High-Speed Rail (HSR) System.

**FOR FURTHER INFORMATION CONTACT:** Andréa Martin, Senior Environmental Protection Specialist, Office of Railroad Policy and Development (RPD), telephone: (202) 493-6201, email: [Andrea.Martin@dot.gov](mailto:Andrea.Martin@dot.gov); or Marlys Osterhues, Chief, Environment and Project Engineering, RPD, telephone: (202) 493-0413, email: [Marlys.Osterhues@dot.gov](mailto:Marlys.Osterhues@dot.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to 23 U.S.C. 327 (Section 327), the California High-Speed Rail Authority (CHSRA or Authority) has assumed FRA's environmental review responsibilities under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). However, under Section 327, FRA remains responsible for compliance with the Clean Air Act General Conformity requirements. In compliance with NEPA and the California Environmental Quality Act (CEQA), the Authority published a Final Environmental Impact Record/Final Environmental Impact Statement (EIR/EIS) for the Burbank to Los Angeles Section of the California High-Speed Rail (HSR) System on November 5, 2021. The Final EIR/EIS is available at <https://hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/burbank-to-los-angeles-project-section-draft-environmental-impact-report-environmental-impact-statement/>.

FRA prepared a Draft General Conformity Determination, pursuant to 40 CFR part 93, subpart B, which establishes the process for complying with the General Conformity requirements of the Clean Air Act. FRA published a notice in the **Federal Register** on September 20, 2021 advising the public of the availability of the Draft Conformity Determination for a 30-day review and comment period.

The Draft Conformity Determination was published at <http://www.regulations.gov>, Docket No. FRA-2021-0082. The comment period of the Draft Conformity Determination closed on October 20, 2021. FRA received one comment expressing support for the project and Draft General Conformity Determination.

FRA prepared the Final General Conformity Determination pursuant to 40 CFR part 93, subpart B, and based on the Authority's coordination with the U.S. Environmental Protection Agency (EPA), the California Air Resources Board (CARB), and the South Coast Air Quality Management District (SCAQMD). The analysis found that construction period emissions would exceed the General Conformity *de minimis* threshold for Nitrogen Oxides (NO<sub>x</sub>). However, operation of the Project would result in an overall reduction of regional emissions of all applicable air pollutants and would not cause a localized exceedance of an air quality standard. Consistent with the General Conformity Rule, the Authority will ensure all remaining emissions that exceed the *de minimis* thresholds, after implementation of the impact avoidance and minimization features and onsite mitigation measures, will be offset through an agreement with SCAQMD. The Authority and SCAQMD will enter into an agreement after receipt of construction funding but prior to the start of construction. Based on this commitment, FRA determined the Project will conform to the requirements in the approved State Implementation Plan.

The Final General Conformity Determination is available at <http://www.regulations.gov>, Docket No. FRA-2021-0082, and FRA's website at <https://railroads.dot.gov/environmental-reviews/clean-air-act-california-general-conformity-determinations>.

Issued in Washington, DC,

**Jamie P. Rennert,**

*Director, Office of Infrastructure Investment.*

[FR Doc. 2021-26709 Filed 12-9-21; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Funding Opportunity for the Federal-State Partnership for State of Good Repair Program

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Funding Opportunity (NOFO or notice).

**SUMMARY:** This notice details the application requirements and procedures to obtain grant funding for eligible projects under the Federal-State Partnership for State of Good Repair Program (Partnership Program). This notice solicits applications for Partnership Program funds made available by the Consolidated Appropriations Act, 2021. The opportunity described in this notice is made available under Assistance Listings Number 20.326, “Federal-State Partnership for State of Good Repair.”

**DATES:** Applications for funding under this solicitation are due no later than 5:00 p.m. ET, March 7, 2022. Late or incomplete applications will not be considered for funding. See *Section D* of this notice for additional information on the application process.

**ADDRESSES:** Applications must be submitted via [www.Grants.gov](http://www.Grants.gov). Only applicants who comply with all submission requirements described in this notice and submit applications through [www.Grants.gov](http://www.Grants.gov) will be eligible for award. For any supporting application materials that an applicant is unable to submit via [www.Grants.gov](http://www.Grants.gov) (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to Mr. Bryan Rodda, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38–203, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline.

**FOR FURTHER INFORMATION CONTACT:** For further information related to this notice, please contact Mr. Bryan Rodda, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38–203, Washington, DC 20590; email: [Bryan.Rodda@dot.gov](mailto:Bryan.Rodda@dot.gov); phone: 202–493–0443.

**SUPPLEMENTARY INFORMATION:** This notice wholly supersedes and cancels FRA’s prior notice for this program, published in the **Federal Register** on December 7, 2021 (86 FR 69352), which was incomplete. Applicants should refer only to this notice for application requirements and procedures.

Notice to applicants: FRA recommends that applicants read this notice in its entirety prior to preparing application materials. Definitions of key

terms used throughout the NOFO are provided in *Section A(2)* below. These key terms are capitalized throughout the NOFO. There are several administrative and specific eligibility requirements described herein with which applicants must comply. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length.

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#### A. Program Description

##### 1. Overview

Our nation’s rail network is a critical component of the U.S. transportation system and economy. Prior to the coronavirus disease 2019 (COVID–19) pandemic, rail carried over 32.5 million passengers on Amtrak services and approximately 1.6 billion tons of freight valued at over \$600 billion each year. The Partnership Program provides a Federal funding opportunity to improve American passenger rail infrastructure to enhance rail safety, reduce the backlog of deferred maintenance for Amtrak or publicly owned or controlled railroad assets, create new opportunities for underserved communities, and invest in projects that support and spur economic growth.

The purpose of the Partnership Program is to fund projects within the United States to repair, replace, or rehabilitate Qualified Railroad Assets to reduce the state of good repair backlog and improve Intercity Passenger Rail performance. Section E of this NOFO provides additional information on these program priorities.

The Partnership Program is authorized in Sections 11103 and 11302 of the Passenger Rail Reform and Investment Act of 2015 (Title XI of the Fixing America’s Surface Transportation (FAST) Act, Pub. L. 114–94 (2015)); codified at 49 U.S.C. 24911, and this NOFO is funded by the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) (Appropriations Act).<sup>1</sup> The opportunity described in this notice is made available under Assistance

<sup>1</sup> Funds made available under this NOFO are subject to 49 U.S.C. 24911 as it existed on the day of the enactment of the Appropriations Act.

Listings Number 20.326, “Federal-State Partnership for State of Good Repair.”

Consistent with Biden-Harris Administration priorities, the Department seeks to fund projects under the Partnership Program that address climate change impacts and environmental justice. Projects should include components that reduce emissions, promote energy efficiency, increase resilience, and recycle or redevelop existing infrastructure. This objective is consistent with Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619). As part of the Department’s implementation of that Executive Order, the Department encourages the submission of applications that would direct resources and benefits towards low-income communities, overburdened communities, or communities underserved by affordable transportation.

The Department also seeks to use the Partnership Program to encourage racial equity by investing in projects that proactively address racial equity and barriers to opportunity. Projects should include components that improve or expand transportation options and mitigate the safety risks and detrimental quality of life effects that rail lines can have on communities, particularly low-income areas, and communities of color. This objective supports the Department’s strategic goal related to infrastructure, with the potential for significantly enhancing environmental stewardship and community partnerships, and reflects Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009). Section E describes the climate change, environmental justice, and racial equity considerations further.

The Partnership Program is intended to benefit both railroad assets in the Northeast Corridor (“NEC”) and public or Amtrak-owned or controlled infrastructure, equipment, and facilities located in other areas of the country. Applicants should note that the Partnership Program has distinct eligibility requirements based on project location. In addition to the generally applicable requirements, applicants proposing NEC Projects should specifically review the NEC-specific requirements provided in *Section C(3)(b)*, and the Qualified Railroad Asset information provided in *Section D(2)(a)(vi)* while applicants proposing Non-NEC Projects should review the Qualified Railroad Asset information provided in *Section D(2)(a)(v)*.

## 2. Changes From FY 2020 Partnership Program NOFO

This notice updates the FY 2020 Partnership Program NOFO to reflect the Biden-Harris Administration's priorities for creating good-paying jobs, improving safety, applying transformative technology, and explicitly addressing climate change and racial equity as discussed in Section E(1)(c)(ii).

This notice expands the definition of Capital Project, making expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way) of a Capital Project eligible for funding independently or in conjunction with proposed funding for construction or acquisition, as directed by the Appropriations Act.

## 3. Definitions of Key Terms

Terms defined in this section are capitalized throughout this notice.

a. "Benefit-Cost Analysis" (or "Cost-Benefit Analysis") is a systematic, data-driven, and transparent analysis comparing monetized project benefits and costs, using a no-build baseline and properly discounted present values, including concise documentation of the assumptions and methodology used to produce the analysis, a description of the baseline, data sources used to project outcomes, values of key input parameters, basis of modeling (including spreadsheets, technical memos, etc.), and presentation of the calculations in sufficient detail and transparency to allow the analysis to be reproduced and sensitivity of results evaluated by FRA. Please refer to the Benefit-Cost Analysis (BCA) Guidance for Discretionary Grant Programs prior to preparing a BCA at <https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance>. In addition, please also refer to the BCA FAQs on FRA's website for rail-specific examples of how to apply the BCA Guidance for Discretionary Grant Programs to Partnership Program applications.

b. "Capital Project" means a project primarily intended to replace, rehabilitate, or repair major infrastructure assets utilized for providing Intercity Passenger Rail service, including tunnels, bridges, stations, and other assets, as determined by the Secretary of Transportation; a project primarily intended to improve Intercity Passenger Rail performance, including reduced trip times, increased train frequencies, and higher operating

speeds, and other improvements, as determined by the Secretary; and a project for expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way) of a project, consistent with 49 U.S.C. 24911(a)(2) and the Appropriations Act.

c. "Construction" means the production of fixed works and structures or substantial alterations to such structures or land and associated costs.

d. "Commuter Rail Passenger Transportation" means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple ride, and commuter tickets and morning and evening peak period operations, consistent with 49 U.S.C. 24102(3).

e. "Final Design (FD)" means design activities following Preliminary Engineering, and at a minimum, includes the preparation of final Construction plans, detailed specifications, and estimates sufficiently detailed to inform project stakeholders (designers, reviewers, contractors, suppliers, etc.) of the actions required to advance the project from design through completion of Construction.

f. "Intercity Rail Passenger Transportation" means rail passenger transportation, except Commuter Rail Passenger Transportation, consistent with 49 U.S.C. 24911(a)(3). In this notice, "Intercity Passenger Rail" is an equivalent term to "Intercity Rail Passenger Transportation."

g. "Major Capital Project" means a Capital Project with an estimated total project cost of \$300 million or more.

h. "National Environmental Policy Act (NEPA)" is a Federal law that requires Federal agencies to analyze and document the environmental impacts of a proposed action in consultation with appropriate Federal, state, and local authorities, and with the public. NEPA classes of action include an Environmental Impact Statement (EIS), Environmental Analysis (EA) or Categorical Exclusion (CE). The NEPA class of action depends on the nature of the proposed action, its complexity, and the potential impacts. For purposes of this NOFO, NEPA also includes all related Federal laws and regulations including the Clean Air Act, Section 4(f) of the Department of Transportation Act, Section 7 of the Endangered Species Act, and Section 106 of the National Historic Preservation Act. Additional information regarding FRA's environmental processes and requirements are located at <https://www.fra.dot.gov/environment>.

i. "NEC Project" means a Capital Project where the Qualified Railroad Assets involved in the project are part of, or in primary use for, the Northeast Corridor ("NEC").

j. "Non-NEC Project" means a Capital Project where the Qualified Railroad Assets involved in the project are not part of, or are not in primary use for, the Northeast Corridor ("NEC").

k. "Northeast Corridor" ("NEC") means the main rail line between Boston, Massachusetts, and the District of Columbia; the branch rail lines connecting to Harrisburg, Pennsylvania, Springfield, Massachusetts, and Spuyten Duyvil, New York; and facilities and services used to operate and maintain these lines, consistent with 49 U.S.C. 24911(a)(4).

l. "Preliminary Engineering (PE)" means engineering design to: (1) Define a project, including identification of all environmental impacts, design of all critical project elements at a level sufficient to assure reliable cost estimates and schedules, (2) complete project management and financial plans, and (3) identify procurement requirements and strategies. The PE development process starts with specific project design alternatives that allow for the assessment of a range of rail improvements, specific alignments, and project designs. PE generally occurs concurrently with NEPA and related analyses, and prior to FD and Construction.

m. A "Qualified Railroad Asset," consistent with 49 U.S.C. 24911(a)(5), means infrastructure, equipment, or a facility that:

i. Is owned or controlled by an eligible applicant;

ii. is contained in the planning document developed under 49 U.S.C. 24904 and for which a cost-allocation policy has been developed under 49 U.S.C. 24905(c), or is contained in an equivalent planning document and for which a similar cost-allocation policy has been developed; and

iii. was not in a State of Good Repair on the date of enactment of the Passenger Rail Reform and Investment Act of 2015 (December 4, 2015).

See Section D(2)(a), Project Narrative, for further details about the Qualified Railroad Asset requirements and application submission instructions related to Qualified Railroad Assets.<sup>2</sup>

n. "State of Good Repair" means a condition in which physical assets, both

<sup>2</sup> For any project that includes purchasing intercity passenger rail equipment, applicants are encouraged to use a standardized approach to the procurement, such as the specifications developed by the Next Generation Corridor Equipment Pool Committee or a similarly uniform process.

individually and as a system, are (A) performing at a level at least equal to that called for in their as-built or as-modified design specification during any period when the life cycle cost of maintaining the assets is lower than the cost of replacing them; and (B) sustained through regular maintenance and replacement programs, consistent with 49 U.S.C. 24102(12).

## B. Federal Award Information

### 1. Available Award Amount

The total funding available for awards under this NOFO is \$198,000,000 made available by the Appropriations Act. Should additional Partnership Program funds become available after the release of this NOFO, FRA may elect to award such additional funds to applications received under this NOFO. Any selection and award under this NOFO is subject to the availability of appropriated funds.

### 2. Award Size

There are no predetermined minimum or maximum dollar thresholds for awards. FRA anticipates making multiple awards with the available funding. Given the limited amount of funding currently available, FRA may not be able to award grants to all eligible applications even if they meet or exceed the stated evaluation criteria (see *Section E*, Application Review Information). Projects may require more funding than is available. FRA encourages applicants to propose a project that has operational independence or a component of such project and that can be completed and implemented with funding under this NOFO as a part of the total project cost together with other, non-Federal sources. (See *Section C(3)(c)* for more information.)

Applicants proposing a Major Capital Project may identify and describe project phases or elements that could be candidates for subsequent Partnership Program funding, if such funding becomes available. Applications for a Major Capital Project that would seek future funds beyond funding made available in this notice should indicate anticipated annual Federal funding requests from this program for the expected duration of the project. FRA may issue Letters of Intent to Partnership Program grant recipients proposing Major Capital Projects under 49 U.S.C. 24911(g); such Letters of Intent would serve to announce FRA's intention to obligate an amount from future available budget authority toward a grant recipient's future project phases or elements. A Letter of Intent is not an

obligation of the Federal government and is subject to the availability of appropriations for Partnership Program grants and subject to Federal laws in force or enacted after the date of the Letter of Intent.

### 4. Award Type

FRA will make awards for projects selected under this notice through grant agreements and/or cooperative agreements. Grant agreements are used when FRA does not expect to have substantial Federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial Federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight. The term "grant" is used throughout this document and is intended to reference funding awarded through a grant agreement, as well as funding awarded through a cooperative agreement. The funding provided under this NOFO will be made available to grantees on a reimbursable basis. Applicants must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA. Additionally, the grantee is expected to expend matching funds at the required percentage concurrent with Federal funds throughout the life of the project. See an example of standard terms and conditions for FRA grant awards at: <https://www.fra.dot.gov/eLib/Details/L19057>. This template is subject to revision.

### 5. Concurrent Applications

DOT and FRA may be concurrently soliciting applications for transportation infrastructure projects for several financial assistance programs. Applicants may submit applications requesting funding for a particular project to one or more of these programs. In the application for funding under this NOFO, applicants must indicate the other program(s) to which they submitted or plan to submit an application for funding the entire project or certain project components, as well as highlight new or revised information in the application responsive to this NOFO that differs from the previously submitted application(s).

## C. Eligibility Information

This section of the notice explains applicant eligibility, cost sharing and matching requirements, project eligibility, and project component

operational independence. Applications that do not meet the requirements in this section will be ineligible for funding. Instructions for submitting eligibility information to FRA are detailed in *Section D* of this NOFO.

### 1. Eligible Applicants

The following entities are eligible applicants for all projects permitted under this notice:

- (1) A State (including the District of Columbia);
- (2) a group of States;
- (3) an Interstate Compact;
- (4) a public agency or publicly chartered authority established by one or more States;<sup>3</sup>
- (5) a political subdivision of a State;
- (6) Amtrak, acting on its own behalf or under a cooperative agreement with one or more states; or
- (7) any combination of the entities described in (1) through (6).

Applications must identify a lead applicant. The lead applicant serves as the primary point of contact for the application, and if selected, as the grantee of the Partnership Program grant award. To submit a joint application, the lead applicant must identify the joint applicant(s) and include a signed statement from an authorized representative of each joint applicant entity that affirms the entity joins the application. See *Section D(2)* for further instructions about submitting a joint application.

An application submitted by Amtrak and one or more States, whether eligible under (1), (2) or (6) above, must identify the lead applicant and include a signed cooperative agreement between Amtrak and the state(s) consistent with 49 U.S.C. 24911(a)(1)(F). Selection preference will be provided for joint applications, as further discussed in *Section E(1)(c)*. Applications may reference entities that are not eligible applicants (e.g., private sector firms) in an application as a partner in project funding or implementation, but ineligible entities do not qualify as lead or joint applicants. FRA will provide selection preference only to joint applications submitted by multiple eligible applicants.

### 2. Cost Sharing or Matching

The Federal share of total costs for Partnership Program projects funded under this notice shall not exceed 80 percent. FRA will provide selection preference to applications where the proposed Federal share of total project

<sup>3</sup> See Section D(2)(a)(iv) for supporting documentation required to demonstrate eligibility under this eligibility category.

costs is 50 percent or less. The estimated total cost of a project must be based on the best available information, including engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment and/or facilities. Additionally, in preparing estimates of total project costs, applicants may use FRA's cost estimate guidance documentation, "Capital Cost Estimating: Guidance for Project Sponsors," which is available at: <https://www.fra.dot.gov/Page/P0926>.

The minimum 20 percent non-Federal share may be comprised of public sector (e.g., State or local) or private sector funding. FRA will not consider any Federal financial assistance<sup>4</sup> or any non-Federal funds already expended (or otherwise encumbered) toward the matching requirement, unless compliant with 2 CFR part 200. In-kind contributions, including the donation of services, materials, and equipment, may be credited as a project cost, in a uniform manner consistent with 2 CFR 200.306.

If Amtrak is an applicant, Amtrak may use its ticket and other non-Federal revenues generated from its operations and other sources to satisfy the non-Federal share requirements. Applicants must identify the source(s) of their matching and other funds and must clearly and distinctly reflect these funds as part of the total project cost.

Before applying, applicants should carefully review the principles for cost sharing or matching in 2 CFR 200.306. See Section D(2)(a)(iii) for required application information on non-Federal match and Section E for further discussion of FRA's consideration of matching funds in the review and selection process. FRA will approve pre-award costs consistent with 2 CFR 200.458, as applicable. See Section D(6). Cost sharing or matching may be used only for authorized Federal award purposes.

### 3. Other

#### a. Project Eligibility

The following rail projects within the United States to replace or rehabilitate Qualified Railroad Assets and improve Intercity Passenger Rail performance are eligible for funding under 49 U.S.C. 24911, the Appropriations Act, and this NOFO:

(1) Capital Projects to replace existing assets in-kind;

(2) Capital Projects to replace existing assets with assets that increase capacity or provide a higher level of service;

(3) Capital Projects to ensure that service can be maintained while existing assets are brought to a State of Good Repair; and

(4) Capital Projects to bring existing assets into a State of Good Repair.

Qualified Railroad Assets, as further defined in Section A(2), are owned or controlled by an eligible applicant and may include: Infrastructure, including track, ballast, switches and interlockings, bridges, communication and signal systems, power systems, highway-rail grade crossings, and other railroad infrastructure and support systems used in intercity passenger rail service; stations, including station buildings, support systems, signage, and track and platform areas; equipment, including passenger cars, locomotives, and maintenance-of-way equipment; and facilities, including yards and terminal areas and maintenance shops. Capital Projects, as further defined in Section A(2), may include PE, NEPA, Final Design, Construction, or expenses incidental to the acquisition or Construction of a Capital Project. Corridor or project-specific planning studies are not eligible. Pre-Construction activities are eligible for funding independently or in conjunction with proposed funding for construction.

PE/NEPA examples include: Engineering drawings and specifications (scale drawings at the 30% design level, including track geometry as appropriate); design criteria, schematics and/or track charts that support the development of PE; and work that can be funded in conjunction with developing PE, such as operations modeling, surveying, project work/management plans, preliminary cost estimates, and preliminary project schedules. PE/NEPA projects funded under this NOFO must be sufficiently developed to support FD or Construction activities. (See Section D(2)(a)(xii) for additional information.)

#### b. Additional Eligibility Requirements for NEC Projects

This section provides additional eligibility requirements for NEC Projects. Applicants proposing Non-NEC Projects are not subject to the requirements in this section and do not need to respond to them in their application and may proceed to Section C(3)(c) below.

In the Partnership Program, grant funds may not be provided to an eligible recipient for an eligible NEC Project unless Amtrak and the public

authorities providing commuter rail passenger transportation at the eligible project location on the NEC are in compliance with 49 U.S.C. 24905(c)(2). Applicants must demonstrate compliance with 49 U.S.C. 24905(c)(2) by describing the status of compliance with such cost-allocation policy between Amtrak and the public authorities providing commuter rail passenger transportation at the eligible project location, which may include demonstrating that such authorities are excepted from allocating costs for the proposed NEC Project, such as for a project that solely benefits intercity passenger rail, consistent with 49 U.S.C. 24905(c)(1)(A)(ii). Such providers must maintain compliance with 49 U.S.C. 24905(c)(2) for the duration of the project.

#### c. Project Component

If an applicant requests funding for a project that is a component or set of components of a larger project, the project component(s) must be attainable with the award amount and comply with all eligibility requirements described in Section C.

In addition, the component(s) must enable independent analysis and decision making, as determined by FRA under NEPA (i.e., have independent utility, connect logical termini, and do not restrict the consideration of alternatives for other reasonably foreseeable rail projects).

### D. Application and Submission Information

Required documents for the application are outlined in the following paragraphs. Applicants must complete and submit all components of the application. See Section D(2) for the application checklist. FRA welcomes the submission of additional relevant supporting documentation, such as planning, engineering and design documentation, and letters of support from partnering organizations that will not count against the Project Narrative 25-page limit.

#### 1. Address To Request Application Package

Applicants must submit all application materials in their entirety through <http://www.Grants.gov> no later than 5:00 p.m. ET, on March 7, 2022. Applicants are strongly encouraged to apply early to ensure that all materials are received before the application deadline. FRA reserves the right to modify this deadline. General information for submitting applications through [Grants.gov](http://www.Grants.gov) can be found at: <https://www.fra.dot.gov/Page/P0270>.

<sup>4</sup> See Section D(2)(a)(iii) for supporting information required to demonstrate eligibility of Federal funds for use as match.

FRA is committed to ensuring that information is available in appropriate alternative formats to meet the requirements of persons who have a disability. If you require an alternative version of files provided, please contact Lou Lorello, Office of the Chief Financial Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36-111, Washington, DC 20590; email: [lou.lorello@dot.gov](mailto:lou.lorello@dot.gov); phone: 202-493-8026.

2. Content and Form of Application Submission

FRA strongly advises applicants to read this section carefully. Applicants must submit all required information and components of the application package to be considered for funding. Additionally, applicants selected to receive funding must satisfy the requirements in 49 U.S.C. 22905 explained in part at <https://www.fra.dot.gov/page/P0185> and further in section F.2 of this notice.

Required documents for an application package are outlined in the checklist below.

- Project Narrative (see D.2.a).
- Statement of Work (see D.2.b.i).
- Benefit-Cost Analysis (see D.2.b.ii).

- Environmental Compliance Documentation (see D.2.b.iii).
- SF424—Application for Federal Assistance.
  - SF 424C—Budget Information for Construction, or, for an equipment procurement project or non-Construction project, SF 424A—Budget Information for Non-Construction.
  - SF 424D—Assurances for Construction, or, for an equipment procurement project or non-Construction project, SF 424B—Assurances for Non-Construction.
- FRA’s Additional Assurances and Certifications.
  - SF LLL—Disclosure of Lobbying Activities.
  - Draft Agreement required under 49 U.S.C. 22905(c)(1), if applicable (see D.2.b.xi).

a. Project Narrative

This section describes the minimum content required in the Project Narrative of grant applications. The Project Narrative must follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Cover Page .....	See D.2.a.i
II. Project Summary .....	See D.2.a.ii
III. Project Funding .....	See D.2.a.iii

IV. Applicant Eligibility Criteria ..	See D.2.a.iv
V. Non-NEC Project Eligibility Criteria.	See D.2.a.v
VI. NEC Project Eligibility Criteria	See D.2.a.vi
VII. Detailed Project Description ..	See D.2.a.vii
VIII. Project Location .....	See D.2.a.viii
IX. Grade Crossing Information, if applicable.	See D.2.a.ix
X. Evaluation and Selection Criteria.	See D.2.a.x
XI. Project Implementation and Management.	See D.2.a.xi
XII. Environmental Readiness .....	See D.2.a.xii

The above content must be provided in a narrative statement submitted by the applicant. The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting documentation). FRA will not review or consider Project Narratives beyond the 25-page limitation. If possible, applicants should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the relevant portion of the supporting document with the page numbers of the cited information in the Project Narrative. The Project Narrative must adhere to the following outline.

- i. *Cover Page*: Include a cover page that lists the following elements in either a table or formatted list:

Project Title	
Lead Applicant Name	
Joint Applicant(s) Name(s), if any	
Amount of Federal Funding Requested Under this NOFO	
Proposed Non-Federal Match	
Total Project Cost	
Was a Federal Grant Application Previously Submitted for this Project? .....	Yes/No
If Yes, State the Name of the Federal Grant Program and Title of the Project in the Previous Application ...	Federal Grant Program:
City(-ies), State(s) Where the Project is Located	
Congressional District(s) Where the Project is Located	

ii. *Project Summary*: Provide a brief 4–6 sentence summary of the proposed project and what the project will entail. Include challenges the proposed project aims to address and summarize the intended outcomes and anticipated benefits that will result from the proposed project.

iii. *Project Funding*: Indicate in table format the amount of Federal funding requested, the proposed non-Federal match, and total project cost. Identify the source(s) of matching and other funds, and clearly and distinctly reflect these funds as part of the total project cost in the application budget. Include funding commitment letters outlining funding agreements, as attachments or

in an appendix. If Federal funding is proposed as match, demonstrate the applicant’s determination of eligibility for such use, and the legal basis for that determination. Also, note if the requested Federal funding under this NOFO or other programs must be obligated or spent by a certain date due to dependencies or relationships with other Federal or non-Federal funding sources, related projects, law, or other factors. If applicable, provide the type and estimated value of any proposed in-kind contributions, as well as substantiate how the contributions meet the requirements in 2 CFR 200.306. For a Major Capital Project that would seek future funds beyond funding made

available in this notice, provide the anticipated annual Federal funding requests from this grant program, anticipated future non-Federal match, and total project cost for the entire expected duration of the project. Finally, specify whether Federal funding for the project has previously been sought, and identify the Federal program and fiscal year of the funding request(s), as well as highlight new or revised information in the Partnership Program application that differs from the application(s) to other financial assistance programs.

*Example Project Funding Table:*

Task No.	Task name/project component	Cost	Percentage of total cost
1			
2			

Task No.	Task name/project component	Cost	Percentage of total cost
Total Project Cost			
Federal Funds Received from Previous Grant			
Federal Funding Under this NOFO Request			
Non-Federal Funding/Match		Cash: In-Kind:	
Portion of Non-Federal Funding from the Private Sector			
Portion of Total Project Costs Spent in a Rural Area			
Pending Federal Funding Requests			

*iv. Applicant Eligibility Criteria:*

Explain how the lead applicant and joint applicant(s) meet the applicant eligibility criteria outlined in *Section C* of this notice. For public agencies and publicly chartered authorities established by one or more States, the explanation must include citations to the applicable enabling legislation. To submit a joint application, the lead applicant must identify the joint applicant(s) and include a signed statement from an authorized representative of each joint applicant entity that affirms the entity joins the application.

For joint applications involving Amtrak and one or more States, Amtrak and the State(s) must provide a cooperative agreement for the project signed by authorized representatives of Amtrak and each State. Joint applications are expected to include a description of the roles and responsibilities of each applicant, including budget and subrecipient information showing how the applicants will share project costs.

*v. Non-NEC Project Eligibility Criteria:* This section provides project eligibility requirements for Non-NEC Projects. Applicants proposing NEC Projects may skip this section and proceed to section D(2)(a)(vi). For Non-NEC Projects, demonstrate that the proposed project is a Capital Project that meets the project eligibility criteria in *Section C(3)* of this notice. Further, demonstrate that the infrastructure, equipment and/or facilities involved in the proposed project are Qualified Railroad Assets under 49 U.S.C. 24911(a)(5), as follows:

(A) To demonstrate ownership or control by an eligible applicant under 49 U.S.C. 24911(a)(5)(A), show either:

(1) The lead or joint applicant owns or will, at project completion, have ownership of the infrastructure, equipment, or facility improved by the project; or

(2) The lead or joint applicant controls or will, at project completion, have control over the infrastructure, equipment, or facility improved by the project including by agreement with the infrastructure, equipment, or facility owner(s). Applicants should describe

such agreement(s) in sufficient detail in their application for FRA to understand the extent of the control, including the lead or joint applicant's management and decision-making authority regarding the infrastructure, equipment, or facility improved by the project, and the remaining or anticipated duration of the agreement(s). Agreements involving railroad rights-of-way should also demonstrate the lead or joint applicant has train dispatching and maintenance-of-way responsibilities for the right-of-way.

(B) To demonstrate the requirements under 49 U.S.C. 24911(a)(5)(B), show that the infrastructure, equipment, or facilities involved in the proposed project are contained in a planning document equivalent to the planning document developed under 49 U.S.C. 24904 and for which a similar cost-allocation policy to the cost-allocation policy developed under 49 U.S.C. 24905(c) has been developed.

Non-NEC Projects may satisfy the equivalent planning document requirement described above by demonstrating the project is contained in the planning document(s) prepared under 49 U.S.C. Chapter 227, "State Rail Plans," for the State(s) where the infrastructure, equipment and facilities are located or in primary use. Applicants with projects contained in a State Rail Plan should indicate the location (*e.g.*, table or page number) where the project is discussed in the document. If a project is not contained in the State Rail Plan, applicants may demonstrate the infrastructure, equipment and facilities involved in the proposed project are contained in an alternate equivalent planning document or amend the relevant State Rail Plan(s) to contain the project. Amending a State Rail Plan requires a letter to FRA from an authorized representative of the relevant State rail transportation authority adding the proposed project to the plan and stating that the letter serves as an addendum to the current plan. Such a letter should include the project name, a brief description of the project, and estimated project cost and Federal and non-Federal share by funding source. FRA encourages State rail

transportation authorities to make any such addendum letters publicly available with their State Rail Plans. FRA recommends such letters be submitted as part of an applicant's Partnership Program application via *Grants.gov*. Whether submitted as part of a Partnership Program application package or separately to FRA, FRA must receive the letter by the application due date of this notice.

Non-NEC Projects must satisfy the similar cost-allocation policy requirement either by demonstrating the infrastructure, equipment or facilities involved in the proposed project are for routes subject to the cost-sharing methodology adopted under Section 209 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Public Law 110-432, Oct. 16, 2008; or by demonstrating the infrastructure, equipment or facilities involved in the proposed project are subject to a similar cost-sharing or cost-allocation policy.

(C) To demonstrate the state of good repair requirement under 49 U.S.C. 24911(a)(5)(B):

(1) Describe the condition and performance of the infrastructure, equipment, or facility as of the time of enactment of the Passenger Rail Reform and Investment Act of 2015 (Dec. 4, 2015);

(2) indicate how the infrastructure, equipment, or facility's condition or performance falls short of the definition of "State of Good Repair" in *Section A(2)*; and

(3) indicate, if known, when the infrastructure, equipment, or facility last received comprehensive repair, replacement, or rehabilitation work similar to the applicant's proposed scope of work.

*vi. NEC Project Eligibility Criteria:* This section provides project eligibility requirements for NEC Projects. (Applicants proposing Non-NEC Projects may skip this section and proceed to *Section D(2)(a)(vii)*.) For NEC Projects, demonstrate that the proposed project is a Capital Project that meets the project eligibility criteria in *Section C(3)* of this notice including the requirements in 49 U.S.C. 24911(e). Further, demonstrate that the



infrastructure, equipment, and/or facilities involved in the project are Qualified Railroad Assets under 49 U.S.C. 24911(a)(5), as follows:

(A) To demonstrate ownership or control by an eligible applicant under 49 U.S.C. 24911(a)(5)(A), show either:

(1) The lead or joint applicant owns or will, at project completion, have ownership of the infrastructure, equipment, or facility improved by the project; or

(2) The lead or joint applicant controls or will, at project completion, have control over the infrastructure, equipment, or facility improved by the project including by agreement with the infrastructure, equipment, or facility owner(s). Applicants should describe such agreement(s) in sufficient detail in their application for FRA to understand the extent of the control, including the lead or joint applicant's management and decision-making authority regarding the infrastructure, equipment, or facility improved by the project, and the remaining or anticipated duration of the agreement(s). Agreements involving railroad rights-of-way should also demonstrate the lead or joint applicant has train dispatching and maintenance-of-way responsibilities for the right-of-way.

(B) To demonstrate the requirements under 49 U.S.C. 24911(a)(5)(B), show that the infrastructure, equipment, or facilities involved in the proposed project are contained in the planning document developed under 49 U.S.C. 24904 and for which a cost-allocation policy has been developed under 49 U.S.C. 24905(c), or are contained in an equivalent planning document and for which a similar cost-allocation policy has been developed.

NEC Projects must satisfy the planning document requirement by demonstrating the project is contained in the current approved planning document developed under 49 U.S.C. 24904 (*i.e.*, the NEC Commission Five-Year Capital Investment Plan). Applicants with projects contained this plan should indicate the location (*e.g.*, table or page number) where the project is discussed in the document. If an NEC Project is not contained in the 49 U.S.C. 24904 planning document at the time of this notice, applicants may demonstrate that the infrastructure, equipment and facilities involved in the proposed project are contained in an equivalent planning document or update the 49 U.S.C. 24904 planning document to contain the project by the due date for applications under this notice. An equivalent planning document may include a planning document developed under 49 U.S.C. 24320(c).

NEC Projects must satisfy the cost-allocation policy requirement by demonstrating the infrastructure, equipment, or facilities are subject to the cost-allocation policy developed under 49 U.S.C. 24905(c) (*i.e.*, Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy), or a similar cost-allocation policy.

(C) To demonstrate the state of good repair requirement under 49 U.S.C. 24911(a)(5)(C), the NEC applicant must:

(1) Describe the condition and performance of the infrastructure, equipment, or facility as of the time of enactment of the Passenger Rail Reform and Investment Act of 2015 (Dec. 4, 2015);

(2) indicate how the infrastructure, equipment, or facility's condition or performance falls short of the definition of "State of Good Repair" in *Section A(2)*; and

(3) indicate, if known, when the infrastructure, equipment, or facility last received comprehensive repair, replacement, or rehabilitation work similar to the applicant's proposed scope of work.

vii. *Detailed Project Description*: Include a detailed project description that expands upon the brief project summary. This detailed description should provide, at a minimum: Additional background on the transportation challenges the project aims to address; a summary of current and proposed railroad operations in the project area, to include identification of all railroad owners and operators, typical daily, weekly, or annual train counts by operator, and ridership data for passenger operations<sup>5</sup>; the primary expected project outcomes such as increased ridership, reduced delays, improved rail network asset condition and performance, or similar outcomes and benefits; the expected users and beneficiaries of the project, including all railroad operators and types of passenger or freight rail service operating or proposed to operate in the project area; the specific components and elements of the project; and any other information the applicant deems necessary to justify the proposed project. Applicants with Major Capital Projects are encouraged to identify and describe project phases or elements that would be candidates for subsequent Partnership Program funding if such funding becomes available. Include information to demonstrate the project is reasonably expected to begin

<sup>5</sup> Given the on-going impact of the COVID-19 pandemic, applicants may provide pre-pandemic ridership data (*i.e.*, fiscal or calendar year 2019 data), as well as more recent ridership data.

construction in a timely manner. For all projects, applicants must provide information about proposed performance measures, as described in *Section F(3)(c)* and required in 2 CFR 200.301.

viii. *Project Location*: Include geospatial data for the project, as well as a map of the project's location. On the map, include the Congressional districts in which the project will take place.

ix. *Grade Crossing Information, if applicable*: For any project that includes grade crossing components, cite specific DOT National Grade Crossing Inventory information, including the railroad that owns the infrastructure (or the crossing owner, if different from the railroad), the primary railroad operator, the DOT crossing inventory number, and the roadway at the crossing. Applicants can search for data to meet this requirement at the following link: <http://safetydata.fra.dot.gov/OfficeofSafety/default.aspx>.

x. *Evaluation and Selection Criteria*: Include a thorough discussion of how the proposed project meets all of the evaluation and selection criteria, as outlined in *Section E* of this notice. If an application does not sufficiently address the evaluation criteria and the selection criteria, it is unlikely to be a competitive application. To support a finding of eligibility, for projects that are on a shared corridor with Commuter Railroad Passenger Transportation, clearly demonstrate how the proposed project directly benefits Intercity Passenger Rail Transportation and that funding the proposed project would be a reasonable investment in Intercity Passenger Rail Transportation, independent and separate from consideration of the proposed project's benefits to Commuter Railroad Passenger Transportation.

xi. *Project Implementation and Management*: Describe proposed project implementation and project management arrangements, including between the lead and joint applicants, if any. Include descriptions of the expected arrangements for project contracting, contract oversight and control, change-order management, risk management, and conformance to Federal requirements for project progress reporting (see <https://www.fra.dot.gov/Page/P0274>). Describe past experience in managing and overseeing similar projects. For Major Capital Projects, explain plans for a rigorous project management and oversight approach.

xii. *Environmental Readiness*: If the NEPA process is complete, an applicant should indicate the date of completion, and provide a website link or other

reference to the documents demonstrating compliance with NEPA, which might include a final Categorical Exclusion, Finding of No Significant Impact, or Record of Decision. If the NEPA process is not yet underway, the application should state this. If the NEPA process is underway, but not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all NEPA-related milestones. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and why NEPA documents have not been updated and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements. Additional information regarding FRA's environmental processes and requirements are located at <https://www.fra.dot.gov/environment>.

#### b. Additional Application Elements

Applicants must submit:

i. A Statement of Work (SOW) addressing the scope, schedule, and budget for the proposed project if it were selected for award. The SOW must contain sufficient detail so FRA, and the applicant, can understand the expected outcomes of the proposed work to be performed and can monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. Applicants must use FRA's standard SOW, schedule, and budget templates to be considered for award. The templates are located at <https://www.fra.dot.gov/Page/P0325>.

When preparing the budget, the total cost of a project must be based on the best available information as indicated in cited references that include engineering studies, economic feasibility studies, environmental analyses, and information on the expected use of equipment or facilities. For Major Capital Projects, the SOW must include annual budget estimates and anticipated Federal funding for the expected duration of the project.

ii. A Benefit-Cost Analysis consistent with 49 U.S.C. 24911(d)(2)(A), as an appendix to the Project Narrative for each project submitted by an applicant. The BCA should demonstrate in economic terms the merit of investing in the proposed project. The BCA should include anticipated private and public benefits relative to the costs of the proposed project, including the project's anticipated:

- i. Effects on system and service performance;
- ii. effects on safety, competitiveness, reliability, trip or transit time, and resilience;
- iii. efficiencies from improved integration with other modes; and
- iv. ability to meet existing or anticipated demand.

The BCA should be systematic, data driven, and examine the trade-offs between reasonably expected project costs and benefits. Applicants are encouraged to include quantifiable railroad data related to the Qualified Railroad Assets involved in the project, such as information on delay, failure or safety incidents, passengers carried (e.g., ridership), daily train movements, or similar metrics. To the extent feasible, such railroad metrics should be provided discretely for Intercity Passenger Rail and, if applicable, Commuter Rail Passenger Transportation and freight rail transportation services involved in the proposed project. Benefits may be quantified for savings in safety costs, reduced costs from disruption of service, maintenance costs, reduced travel time, emissions reductions, and increases in capacity or ability to offer new types of freight or passenger services. Applicants may also describe other categories of benefits that are difficult to quantify such as noise reduction, environmental impact mitigation, improved quality of life, or reliability of travel times. All benefits claimed for the project must be clearly tied to the expected outcomes of the project. BCAs for proposed projects that include benefits to another transportation mode or service in addition to Intercity Passenger Rail Transportation (e.g., Commuter Rail Passenger Transportation, freight rail, or local public transportation), should provide discrete data and analysis identifying the Intercity Passenger Rail Transportation portion of project benefits. The complexity and level of detail in the Benefit-Cost Analysis prepared for the Partnership Program should reflect the scope and scale of the proposed project. Please refer to the Benefit-Cost Analysis Guidance for Discretionary Grant Programs prior to preparing a BCA at <https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance>. In addition, please also refer to the BCA FAQs on FRA's website (<https://railroads.dot.gov/elibrary/consolidated-rail-infrastructure-and-safety-improvements-crisi-and-federal-state>) for some rail-specific examples of how to apply the Benefit-Cost Analysis Guidance for

Discretionary Grant Programs to Partnership applications.

iii. Environmental compliance documentation, as applicable, if a website link is not cited in the Project Narrative.

iv. SF 424—Application for Federal Assistance.

v. SF 424A—Budget Information for Non-Construction or SF 424C—Budget Information for Construction.

vi. SF 424B—Assurances for Non-Construction or SF 424D—Assurances for Construction.

vii. FRA's Additional Assurances and Certifications.

viii. SF LLL—Disclosure of Lobbying Activities.

ix. A statement that the lead applicant has a system for procuring property and services under a Federal award under this NOFO that supports the provisions in 2 CFR 200 Subpart D—Procurement Standards at 2 CFR 200.317–326 and 2 CFR 1201.317.

x. A statement indicating whether the applicant or any of its principals:

a. Is presently suspended, debarred, voluntarily excluded, or disqualified;

b. has been convicted within the preceding 3 years of any of the offenses listed in 2 CFR 180.800(a); or had a civil judgment rendered against the organization or the individual for one of those offenses within that time period;

c. is presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses listed in 2 CFR 180.800(a); or

d. has had one or more public transactions (Federal, State, or local) terminated within the preceding 3 years for cause or default (including material failure to comply).

xi. Draft Agreement required under 49 U.S.C. 22905(c)(1), if applicable. As a condition of receiving a grant under this program for a project that uses rights-of-way owned by a railroad, the grant recipient shall have in place a written agreement between the grant recipient and the railroad regarding such use and ownership, including any compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with the railroad's employees including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that the grant recipient complies with liability requirements consistent with 49 U.S.C. 28103.

xii. FRA F 251, Applicant Financial Capability Questionnaire.

Forms needed for the electronic application process are at [www.Grants.gov](http://www.Grants.gov).

c. Post-Selection Requirements

See *Section F(2)* of this notice for post-selection requirements.

3. Unique Entity Identifier and System for Award Management (SAM)

To apply for funding through [Grants.gov](http://www.Grants.gov), applicants must be properly registered in SAM before submitting an application, provide a valid unique entity identifier in its application, and continue to maintain an active SAM registration all as described in detail below. Complete instructions on how to register and submit an application can be found at [www.Grants.gov](http://www.Grants.gov). Registering with [Grants.gov](http://www.Grants.gov) is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for a late application.

FRA may not make a grant award to an applicant until the applicant has complied with all applicable Data Universal Numbering System (DUNS) and SAM requirements and if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. (Please note that if a Dun & Bradstreet DUNS number must be obtained or renewed, this may take a significant amount of time to complete). Late applications, including those that are the result of a failure to register or comply with [Grants.gov](http://www.Grants.gov) applicant requirements in a timely manner, will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through [Grants.gov](http://www.Grants.gov), applicants must:

a. Obtain a DUNS Number

A DUNS number is required for [Grants.gov](http://www.Grants.gov) registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS

number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for the government in identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, grantees, and subrecipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Applicants may obtain a DUNS number by calling 1-866-705-5711 or by applying online at <http://www.dnb.com/us>.

b. Register With the SAM at [www.SAM.gov](http://www.SAM.gov)

All applicants for Federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in [Grants.gov](http://www.Grants.gov). The SAM database is the repository for standard information about Federal financial assistance applicants, grantees, and subrecipients. Organizations that have previously submitted applications via [Grants.gov](http://www.Grants.gov) are already registered with SAM, as it is a requirement for [Grants.gov](http://www.Grants.gov) registration. Please note, however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award, including information on a grantee's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable. Information about SAM registration procedures is available at [www.sam.gov](http://www.sam.gov).

c. Create a [Grants.gov](http://www.Grants.gov) Username And Password

Applicants must complete an Authorized Organization Representative (AOR) profile on [www.Grants.gov](http://www.Grants.gov) and create a username and password. Applicants must use the organization's DUNS number to complete this step. Additional information about the registration process is available at: <https://www.grants.gov/web/grants/applicants/organization-registration.html>.

d. Acquire Authorization for Your AOR From the E-Business Point of Contact (E-Biz POC)

The E-Biz POC at the applicant's organization must respond to the registration email from [Grants.gov](http://www.Grants.gov) and login at [www.Grants.gov](http://www.Grants.gov) to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

e. Submit an Application Addressing All Requirements Outlined in This NOFO

If an applicant experiences difficulty at any point during this process, please call the [Grants.gov](http://www.Grants.gov) Customer Center Hotline at 1-800-518-4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: <http://www.grants.gov/web/grants/applicants/apply-for-grants.html>.

4. Submission Dates and Times

Applicants must submit complete applications to [www.Grants.gov](http://www.Grants.gov) no later than 5:00 p.m. ET, March 7, 2022. Applicants will receive a system-generated acknowledgement of receipt. FRA reviews [www.Grants.gov](http://www.Grants.gov) information on dates/times of applications submitted to determine timeliness of submissions. Late applications will be neither reviewed nor considered. Delayed registration is not an acceptable reason for late submission. To apply for funding under this announcement, all applicants are expected to be registered as an organization with [Grants.gov](http://www.Grants.gov). Applicants are strongly encouraged to apply early to ensure all materials are received before this deadline.

To ensure a fair competition of limited discretionary funds, no late submissions will be reviewed for any reason, including: (1) Failure to complete the [Grants.gov](http://www.Grants.gov) registration process before the deadline; (2) failure to follow [Grants.gov](http://www.Grants.gov) instructions on how to register and apply as posted on its website; (3) failure to follow all the instructions in this NOFO; and (4) technical issues experienced with the applicant's computer or information technology environment.

5. Intergovernmental Review

Intergovernmental Review is required for this program. Applicants must contact their State Single Point of Contact to comply with their state's process under Executive Order 12372.

6. Funding Restrictions

Consistent with 2 CFR 200.458, as applicable, FRA will only approve pre-

award costs if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement and if such costs are necessary for efficient and timely performance of the scope of work. Under 2 CFR 200.458, grant recipients must seek written approval from FRA for pre-award activities to be eligible for reimbursement under the grant. Activities initiated prior to the execution of a grant or without FRA's written approval may be ineligible for reimbursement or matching contribution. Cost sharing or matching may be used only for authorized Federal award purposes.

FRA is prohibited under 49 U.S.C. 22905(f) <sup>6</sup> from providing Partnership Program grants for Commuter Rail Passenger Transportation. FRA's interpretation of this provision is informed by the language in 49 U.S.C. 24911, and specifically the definitions of capital project in 49 U.S.C. 24911(a)(2)(A) and (B). FRA's primary intent in funding Partnership Program projects is to make reasonable investments in Capital Projects for Intercity Rail Passenger Transportation. Such projects may be located on shared corridors where Commuter Rail Passenger Transportation and/or freight rail also benefit from the project.

#### 7. Other Submission Requirements

For any supporting application materials that an applicant cannot submit via *Grants.gov*, such as oversized engineering drawings, an applicant may submit an original and two (2) copies to Mr. Bryan Rodda, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38-203, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, FRA advises applicants to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline. Additionally, if documents can be obtained online, explaining to FRA how to access files on a referenced website may also be sufficient.

*Note:* Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may embed picture files, such as .jpg, .gif, and .bmp in document files, applicants should not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

<sup>6</sup> Under 49 U.S.C. 24911(i), Partnership grants are subject to the conditions in 49 U.S.C. 22905.

## E. Application Review Information

### 1. Criteria

#### a. Eligibility, Completeness, and Applicant Risk Review

FRA will first screen each application for applicant and project eligibility (eligibility requirements are outlined in *Section C* of this notice), completeness (application documentation and submission requirements are outlined in *Section D* of this notice), applicant risk and the 20 percent minimum non-Federal match in determining whether the application is eligible.

FRA will then consider applicant risk, including the applicant's past performance in developing and delivering similar projects and previous financial contributions, and if applicable, previous competitive grant technical evaluation ratings that the proposed project received under previous competitive grant programs administered by DOT.

#### b. Evaluation Criteria

FRA will evaluate all eligible and complete applications using the evaluation criteria outlined in this section to determine technical merit and project benefits.

##### i. Technical Merit: FRA will take into account—

(A) The degree to which the tasks and subtasks outlined in the SOW are appropriate to achieve the expected outcomes of the proposed project;

(B) The technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts, and the qualifications of the primary and supporting organizations to fully and successfully execute the proposed project within the proposed timeframe and budget;

(C) The degree to which the proposed project's business plan considers potential private sector participation in the financing, construction, or operation of the proposed project;

(D) Whether the applicant has, or will have, the legal, financial, and technical capacity to carry out the project; satisfactory continuing control over the use of the equipment or facilities; and the capability and willingness to maintain the equipment or facilities;

(E) The applicant's past performance in developing and delivering similar projects, and previous financial contributions;

(F) Whether the project has completed necessary prerequisites and demonstrates strong project readiness; and

(G) Whether the project is consistent with planning guidance and documents

set forth by the Secretary of Transportation or required by law.

ii. Project Benefits: FRA will take into account the benefit-cost analysis of the proposed project, including anticipated private and public benefits relative to the costs of the proposed project including—

(A) Effects on system and service performance;

(B) Effects on safety, competitiveness, reliability, trip or transit time, and resilience;

(C) Efficiencies from improved integration with other modes; and

(D) Ability to meet existing or anticipated demand.

#### c. Selection Criteria

In addition to the eligibility and completeness review and the evaluation criteria outlined in this section, FRA will apply the following selection criteria:

i. FRA will give preference to applications where:

(A) Amtrak is not the sole applicant;

(B) Applications were submitted jointly by multiple eligible applicants; and

(C) The proposed Federal share of total project costs is 50 percent or less.

ii. After applying the above preferences, FRA will take into account the following key DOT objectives:

(A) *Safety.* DOT will assess the project's ability to foster a safe transportation system for the movement of goods and people, consistent with the Department's strategic goal to reduce transportation-related fatalities and serious injuries across the transportation system. Such considerations will include, but are not limited to, the extent to which the project improves safety at highway-rail grade crossings, reduces incidences of rail-related trespassing, and upgrades infrastructure to achieve a higher level of safety.

(B) *Equitable economic strength and improving core assets.* DOT will assess the project's ability to contribute to economic progress stemming from infrastructure investment and associated creation of good jobs with fair wages, labor protections, and the opportunity to join a union. Such considerations will include, but are not limited to, the extent to which the project invests in vital infrastructure assets and provides opportunities for families to achieve economic security through rail industry employment.

(C) *Ensuring investments meet racial equity and economic inclusion goals.* DOT will assess the project's ability to encourage racial equity by investing in projects that proactively address racial equity and barriers to opportunities.

Such considerations will include, but are not limited to, the extent to which the project improves or expands transportation options, mitigates the safety risks and detrimental quality of life effects that rail lines can have on communities, and expands workforce development and training opportunities to foster a more diverse rail industry.

(D) *Resilience and addressing climate change.* DOT will assess the project's ability to reduce the harmful effects of climate change and anticipate necessary improvements for preparedness. Such considerations will include, but are not limited to, the extent to which the project reduces emissions, promotes energy efficiency, increases resilience, and recycles or redevelops existing infrastructure.

(E) *Transformation of our nation's transportation infrastructure.* DOT will assess the project's ability to expand and improve the nation's rail network, which needs to balance new infrastructure for increased capacity with proper maintenance of aging assets. Such considerations will include, but are not limited to, the extent to which the project adds capacity to congested corridors, builds new connections or attracts new users to passenger rail, and ensures assets will be improved to a state of good repair.

iii. For NEC Projects, FRA will consider the appropriate sequence and phasing of projects as contained in the Northeast Corridor capital investment plan developed pursuant to 49 U.S.C. 24904(a).

iv. In determining the allocation of program funds, FRA may also consider geographic diversity, diversity in the size of the systems receiving funding, and the applicant's receipt of other competitive awards.

## 2. Review and Selection Process

FRA will conduct a four-part application review process, as follows:

a. Screen applications for completeness, eligibility, and applicant risk and consider applicable past performance and previous financial contributions and technical evaluation ratings;

b. Evaluate eligible applications (completed by technical panels applying the evaluation criteria);

c. Review, apply selection criteria and recommend initial selection of projects for the FRA Administrator's review (completed by a non-career Senior Review Team, which includes senior leadership from the Office of the Secretary and FRA); and

d. Select recommended awards for the Secretary's review and approval (completed by the FRA Administrator.)

## 3. Reporting Matters Related to Integrity and Performance

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold of \$250,000 (see 2 CFR 200.88 Simplified Acquisition Threshold), FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). See 41 U.S.C. 2313.

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FRA will consider any comments by the applicant, in addition to the other information, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205.

## F. Federal Award Administration Information

### 1. Federal Award Notice

FRA will announce applications selected for funding in a press release and on FRA's website after the application review period. This announcement is FRA's notification to successful and unsuccessful applicants alike. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. This notification is not an authorization to begin proposed project activities. FRA requires satisfaction of applicable requirements by the applicant and a formal agreement signed by both the grantee and the FRA, including an approved scope, schedule, and budget, before obligating the grant. See an example of standard terms and conditions for FRA grant awards at <https://railroads.fra.dot.gov/elibrary/award-administration-and-grant-conditions>. This template is subject to revision.

### 2. Administrative and National Policy Requirements

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, grantees of funds must comply with all applicable requirements of Federal law, including, without limitation, the

Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of DOT; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, grantees, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If DOT determines that a grantee has failed to comply with applicable Federal requirements, DOT may terminate the award of funds and disallow previously incurred costs, requiring the grantee to reimburse any expended award funds.

Examples of administrative and national policy requirements include: 2 CFR part 200; procurement standards at 2 CFR part 200 Subpart D—Procurement Standards; 2 CFR 1207.317 and 2 CFR 200.401; compliance with Federal civil rights laws and regulations; disadvantaged business enterprises requirements; debarment and suspension requirements; drug-free workplace requirements; FRA's and OMB's Assurances and Certifications; Americans with Disabilities Act; safety requirements; NEPA; environmental justice requirements; and compliance with 49 U.S.C. 24905(c)(2) for the duration of NEC Projects. Unless otherwise stated in statutory or legislative authority, or appropriations language, all financial assistance awards follow the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200 and 2 CFR part 1201.

Assistance under this NOFO is subject to the grant conditions in 49 U.S.C. 22905 including the Buy America requirements, protective arrangements that are equivalent to the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this chapter, the provision deeming operators rail carriers and employers for certain purposes, and grantee agreements with railroad right-of-way owners for projects using railroad rights-of-way (see D.2.b.xi). More information about FRA's Buy America requirements is available at: <https://railroads.dot.gov/legislation-regulations/buy-america>.

Grantees must comply with applicable appropriations act requirements and all relevant

requirements of 2 CFR part 200. Rights to intangible property under grants awarded under this NOFO are governed in accordance with 2 CFR 200.315. See an example of standard terms and conditions for FRA grant awards at <https://railroads.fra.dot.gov/elibrary/award-administration-and-grant-conditions>. This template is subject to revision.

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring and close out requirements.

Reports may be submitted electronically. Pursuant to 2 CFR 170.210, non-Federal entities applying under this NOFO must have the necessary processes and systems in place to comply with the reporting requirements should they receive Federal funding.

b. Additional Reporting

Applicants selected for funding are required to comply with all reporting requirements in the standard terms and conditions for FRA grant awards including 2 CFR 180.335 and 2 CFR 180.350.

If the Federal share of any Federal award under this NOFO may include more than \$500,000 over the period of performance, applicants are informed of the post award reporting requirements

reflected in 2 CFR part 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

c. Performance Reporting

Each applicant selected for funding must collect information and report on the project’s performance using measures mutually agreed upon by FRA and the grantee to assess progress in achieving strategic goals and objectives. Examples of some rail performance measures are listed in the table below. The applicable measure(s) will depend upon the type of project. Applicants requesting funding for rolling stock must integrate at least one equipment/rolling stock performance measure, consistent with the grantee’s application materials and program goals.

PERFORMANCE MEASURE

Rail measures	Unit measured	Temporal	Primary strategic goal	Secondary strategic goal	Description
Slow Order Miles .....	Miles .....	Annual .....	State of Good Repair	Safety .....	The number of miles per year within the project area that have temporary speed restrictions (“slow orders”) imposed due to track condition. This is an indicator of the overall condition of track. This measure can be used for projects to rehabilitate sections of a rail line since the rehabilitation should eliminate, or at least reduce the slow orders upon project completion.
Rail Track Grade Separation.	Count .....	Annual .....	Economic Competitiveness.	Safety .....	The number of annual automobile crossings that are eliminated at an at-grade crossing as a result of a new grade separation.
Passenger Counts ...	Count .....	Annual .....	Economic Competitiveness.	State of Good Repair	Count of the annual passenger boardings and alightings at stations within the project area.
Travel Time .....	Time/Trip .....	Annual .....	Economic Competitiveness.	Quality of Life .....	Point-to-point travel times between pre-determined station stops within the project area. This measure demonstrates how track improvements and other upgrades improve operations on a rail line. It also helps make sure the railroad is maintaining the line after project completion.
Track Miles .....	Miles .....	One Time ...	State of Good Repair	Economic Competitiveness.	The number of track miles that exist within the project area. This measure can be beneficial for projects building sidings or sections of additional main line track on a railroad.

d. Federal Awarding Agency Contacts

For further information related to this notice, please contact Mr. Bryan Rodda, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38–203, Washington, DC 20590; email: [Bryan.Rodda@dot.gov](mailto:Bryan.Rodda@dot.gov); phone: 202–493–0443.

e. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover

that the submission “Contains Confidential Business Information (CBI)”; (2) mark each affected page “CBI”; and (3) highlight or otherwise denote the CBI portions.

The DOT regulations implementing the Freedom of Information Act (FOIA) are found at 49 CFR part 7 Subpart C—Availability of Reasonably Described Records under the Freedom of Information Act which sets forth rules for FRA to make requested materials,

information, and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of application and proposals submitted by successful applicants may be released in response to FOIA requests. In addition, following the completion of the selection process and announcement of awards, FRA may publish a list of all applications received along with the names of the applicant organizations and funding amounts requested. Except for information withheld under the previous paragraph, FRA may also make application narratives publicly available or share application information within DOT or with other Federal agencies if FRA determines that sharing is relevant to the respective program's objectives.

Issued in Washington, DC.

Allison Ishihara Fultz,

Chief Counsel.

[FR Doc. 2021-26835 Filed 12-9-21; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2021-0006-N-16]

#### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On August 23, 2021, FRA published a notice providing a 60-day period for public comment on the ICR.

**DATES:** Interested persons are invited to submit comments on or before January 10, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find the particular ICR by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Ms. Hodan Wells, Information Collection Clearance Officer, at email: [Hodan.Wells@dot.gov](mailto:Hodan.Wells@dot.gov) or telephone: (202) 493-0440; or Mr. John Purnell, Information Collection Clearance Officer, at email: [john.purnell@dot.gov](mailto:john.purnell@dot.gov) or telephone: (202) 493-0500.

**SUPPLEMENTARY INFORMATION:** The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On August 23, 2021, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. See 86 FR 47195. FRA received one comment from the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) in response to this 60-day notice. This comment letter is a follow up to a discussion that AAR had with FRA on October 14, 2021. A summary of the discussion is available in the above-referenced docket.

In their joint comment letter, AAR and ASLRRA expressed their concerns with FRA's proposed burden estimates. They asserted that these estimates were significantly reduced from the 2018 OMB control no. 2130-0004 ICR package, even though the scope of the requirements in 49 CFR part 229 have remained unchanged since that time. AAR and ASLRRA specifically cited to §§ 229.21<sup>1</sup> and 229.25(d), in which the paperwork burdens were reduced from 31-33 minutes to 3 minutes and 350 hours to 0 hours, respectively. They also noted that the only information publicly available to compare FRA's significant reduction in estimated burdens is a chart appearing in the 60-day notice.

In response to this feedback, FRA has reviewed its PRA estimates, which are reprinted below. However, except for noting a typographical error associated with § 229.317(g), FRA believes that it accurately captured the part 229 paperwork burdens in the 60-day notice. While preparing this revised ICR package, FRA performed a detailed review of part 229 and made several adjustments to its estimated paperwork burdens. FRA determined that many estimated paperwork burdens were either outdated or accounted for in other regulatory sections. Further, the associated burdens related to inspection

and testing, as well as employee training and job briefings, were appropriately addressed when FRA calculated the economic costs of the regulation. See Executive Order 12866; OMB Circular A-4. FRA is correcting any errors by removing burdens that were accounted for in the regulation's economic analyses, which FRA previously erroneously also calculated as burdens under the PRA.

With respect to AAR's and ASLRRA's specific feedback regarding § 229.21(a), FRA determined that the 31- or 33-minute paperwork burden estimate included the railroads' performance of daily inspections. While AAR and ASLRRA are correct that the regulatory requirement has not changed since 2002, FRA is correcting its previous overestimation errors. Up until 2011, the published average time per response was 1 or 3 minutes.<sup>2</sup> Between 2012 and 2018, FRA incorrectly added the time associated with the performance of daily inspections (which are not burdens under the PRA) to the average time per response, so that it became 16 or 18 minutes in 2002<sup>3</sup> and then 31 or 33 minutes in 2018.<sup>4</sup> The inclusion of inspection time resulted in a significant increase in the overall burden for this requirement from 155,350 to 1.9 million hours in 2012 and to 3.6 million hours in 2018. In the 60-day notice, FRA corrected the average time per response to 1 or 3 minutes, now closely matching the 2011 estimates. Similarly, FRA adjusted the average time per response under § 229.21(b) by removing the estimated paperwork burden associated with inspection that was incorrectly added in 2012. With respect to AAR's and ASLRRA's specific feedback regarding § 229.25(d), FRA maintains that its estimate in the 60-day notice is correct and the estimated paperwork burden had previously been double-counted. Upon review of the requirements under § 229.25(d), FRA found that the burden associated with § 229.25(d)(3) is covered under § 229.25(d)(2). Thus, FRA removed the duplicative burden and included an explanatory note in the PRA table printed below.

Going forward, in future 60-day notices, FRA proposes to highlight the regulatory sections in which estimates have been significantly adjusted to allow stakeholders to more easily determine significant estimate adjustments. As stated above, FRA has reprinted the PRA table in the 60-day

<sup>1</sup> Although a subsection was not specified in the letter, FRA believes that AAR and ASLRRA are referring specifically to 49 CFR 229.21(a).

<sup>2</sup> 76 FR 34287.

<sup>3</sup> 77 FR 21339.

<sup>4</sup> 83 FR 37607.

notice and noted below the significant adjustments.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.10(b); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are

necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

*Title:* Railroad Locomotive Safety Standards and Event Recorders.

*OMB Control Number:* 2130-0004.

*Abstract:* FRA's locomotive safety standards (49 CFR part 229) require railroads to inspect, repair, and

maintain locomotives, including their event recorders, to ensure they are safe and free of defects.

The data gathered from locomotive event recorders is used by the railroad industry and by railroad employees (locomotive engineers, train crews, dispatchers) to improve train handling and promote the safe and efficient operation of trains throughout the country. Locomotive event recorders also provide FRA and State railroad safety inspectors with verified data elements for use in their oversight responsibilities that show how trains are operated from lead locomotives.

*Type of Request:* Extension without change (with changes in estimates) of a currently approved collection.

*Affected Public:* Businesses.

*Form(s):* FRA F 6180.49A.

*Respondent Universe:* 754 railroads.

*Frequency of Submission:* On occasion.

*Reporting Burden:*

CFR section <sup>5</sup>	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total cost equivalent <sup>6</sup>
229.9—Movement of non-complying locomotives—Tagging to indicate “non-complying locomotive”.	754 railroads .....	1,307 tags .....	1 minute .....	21.79	\$1,566.48
229.15(a)(11)—Remote control locomotives—Tagging to indicate in remote control.	754 railroads .....	349 tags .....	1 minute .....	5.82	418.40
—(b)(3) Inspection, testing, and repair—Repair record of defective operator control unit linked to remote control locomotive.	The estimated paperwork burden for this regulatory requirement is covered under § 229.21(a).				
229.17—Accident reports—Reporting of accidents that results in serious injury or death of one or more persons.	The estimated paperwork burden for this regulatory requirement is covered under OMB control number 2130-0500.				
229.20(c)—Operational requirements—Automatic notice to railroads each time locomotive is due for inspection or maintenance ( <i>Note:</i> This requirement does not apply to daily inspections).	754 railroads .....	21,000 automatic notifications.	1 second .....	5.83	451.48
229.21(a)—Daily inspection—Except for multiple-unit (MU) operated locomotive <sup>7</sup> .	754 railroads .....	7,443,020 (744,302 paper records + 6,698,718 electronic records).	3 minutes (paper records) + 1 minute (electronic records).	148,860.40	11,527,749.38
—(b) Written reports of MU locomotive inspections.	754 railroads .....	1,300,000 written reports	3 minutes .....	65,000.00	4,672,850.00
229.23(d)—(g)—Periodic Inspection—Locomotive Inspection & Repair Record—Form FRA F 6180.49A.	718 railroads .....	28,627 other than passenger locomotives.	15 minutes .....	7,156.75	514,498.76
229.23(d)—(g)—Periodic Inspection—Locomotive Inspection & Repair Record—Form FRA F 6180.49A <sup>8</sup> .	36 railroads .....	4,500 passenger locomotives.	15 minutes .....	1,125.00	80,876.25
—(g) Secondary record of the information reported on Form FRA F 6180.49A.	The estimated paperwork burden for this regulatory requirement is covered under § 229.21(a).				
—(h) List of defects and repairs during inspection provided to RR employees.	The associated burdens relating to the retention of defect and repair lists are covered under §§ 229.21 (for reports) and 229.23 (for records of repairs).				
—(i) Document from railroad to employees of all tests conducted since last periodic inspection.	The associated burdens relating to all tests conducted since last periodic inspection are covered under § 229.23 (under “Last Periodic Inspection” entry in Form FRA F 6180.49A).				
229.25(d)(1)—Periodic inspection of event recorders: Written copy of instructions.	FRA anticipates no new instructions during this 3-year ICR period or during the lifecycle of the event recorders. Thus, there will be no additional burdens.				
229.25(d)(2) and (4)—Data verification readout of event recorder.	754 railroads .....	5,908 readout records and reports.	90 minutes .....	8,862.00	686,273.28
—(d)(3) Pre-maintenance test failures of event recorder.	The estimated paperwork burden for this regulatory requirement is covered under § 229.25(d)(2).				
229.27(c)—Annual tests of event recorders with self monitoring feature displaying a failure indication—Tests.	The estimated paperwork burden for this regulatory requirement is covered under § 229.23 (under “Annual Tests” entry in Form FRA F 6180.49A).				



CFR section <sup>5</sup>	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total cost equivalent <sup>6</sup>
229.29—Calibration of locomotive air flow meter—Tests.	The estimated paperwork burden for this regulatory requirement is covered under § 229.23 (under “Air Brakes” entry in Form FRA F 6180.49A).				
229.31—Main reservoir tests: Periodic inspections—Repairs & adjustments, & data on Form FRA F 6180.49A.	The estimated paperwork burden for this regulatory requirement is covered under § 229.23 (under “Hammer and Hydro” in Form FRA F 6180.49A).				
229.33—Out-of-use credit .....	The estimated paperwork burden for this regulatory requirement is covered under § 229.23 (under “Out-of-use Credit” in Form FRA F 6180.49A).				
229.46—Tagging locomotive with inoperative or ineffective automatic/independent brake that can only be used in trailing position.	754 railroads .....	2,269 tags .....	1 minute .....	37.8	2,718.16
229.85—Marking of all doors, cover plates, or barriers having direct access to high voltage equipment with words “Danger High Voltage” or with word “Danger”.	754 railroads .....	1,080 decals or markings	1 minute .....	18.00	1,078.02
229.123(b)(2)—Locomotives equipped with a pilot, snowplow & plate with clearance above 6 inches—Marking/stenciling with words “9-inch Maximum End Plate Height, Yard or Trail Service Only”.	754 railroads .....	22 markings/stencils .....	4 minutes .....	1.44	104.96
—(b)(4) Notation in Remarks section of Form FRA F6180.49A of pilot, snowplow, or end plate clearance above 6 inches.	The estimated paperwork burden for this regulatory requirement is covered under § 229.23 (under “Remarks” in Form FRA F 6180.49A).				
229.135—Removal of event recorder from service—Tags.	The estimated burden for this regulatory requirement is covered under § 229.23 (under “Event Recorder” in Form FRA F 6180.49a).				
—(e) Preserving locomotive event recorder accident data—Reports.	The estimated paperwork burden for this regulatory requirement is covered under OMB control number 2130–0500.				
229.303—Requests to FRA for on-track testing of products outside a facility.	754 railroads .....	5 written requests .....	1 hour .....	5.00	387.20
229.307—Safety analysis for each product subject to this subpart—Document establishing minimum requirements.	754 railroads .....	3 safety analysis documents.	240 hours .....	720.00	55,756.80
229.309—Safety critical changes to product subject to this subpart—Notice to FRA.	754 railroads .....	5 notifications .....	8 hours .....	40.00	3,097.60
—(b) and (c) Report by product suppliers and private owners to railroads of any safety-critical changes to product.	3 manufacturers ...	15 reports .....	8 hours .....	120.00	9,292.80
229.311(a)—Notice to FRA by railroad before placing product in service.	754 railroads .....	3 notifications .....	2 hours .....	6.00	464.64
—(c) Railroad document provided to FRA upon request demonstrating product meets safety analysis requirements for life cycle of product.	The estimated paperwork burden for this regulatory requirement is covered under § 229.307.				
—(d) Railroad maintenance of data base of all safety relevant hazards encountered after product is placed in service.	754 railroads .....	3 databases .....	2 hours .....	6.00	464.64
—(d)(1) Written report to FRA disclosing frequency of safety-relevant hazards for product exceeding threshold set forth in Safety Analysis.	754 railroads .....	1 written report .....	2 hours .....	2.00	154.88
—(d)(2)–(3) Final report to FRA on results of analyses and counter measures to reduce frequency of safety related hazards.	The estimated paperwork burden associated with this requirement is covered under § 229.311(d)(1).				
229.313—Product testing results and records .....	The estimated paperwork burden associated with this requirement is covered under § 229.311(d).				
229.315(b)—Railroad maintenance of Operations and Maintenance Manual containing all documents related to installation, maintenance, repair, modification, & testing of a product subject to this part.	754 railroads .....	3 filings of manuals .....	1 minute .....	.05	3.87
—(c) Configuration management control plan ...	754 railroads .....	3 filings of revised plans ..	1 minute .....	.05	3.87
—(d) and (e) Positive ID of safety-critical components.	The paperwork burdens associated with these requirements are covered under §§ 229.307 and 229.311.				
229.317(a)—Training and qualification program—Establishment and implementation of training qualification program for products subject to this subpart.	754 railroads .....	90 filings of new or revised training programs.	1 minute .....	1.50	116.16
—(b) Employees trained under RR program ....	754 railroads .....	10,000 trained employees’ records.	1 minute .....	166.67	12,906.92
—(f) Periodic refresher training of employees ...	754 railroads .....	1,000 re-trained employees’ records.	1 minute .....	16.67	1,290.92

CFR section <sup>5</sup>	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total cost equivalent <sup>6</sup>
—(g) RR regular and periodic evaluation of effectiveness of its training program (Calculation error corrected.).	754 railroads .....	90 evaluations .....	2 hours .....	180.00	13,939.20
—(h) RR record of individuals designated as qualified under this section.	754 railroads .....	10,000 electronic records	1 minute .....	166.67	12,906.92
Appendix F to Part 229—Guidance for verification and validation of products—Third party assessments.	FRA anticipates zero railroad submissions during this 3-year ICR period.				
—Final report of assessment .....	FRA anticipates zero railroad submissions during this 3-year ICR period.				
<b>Total</b> <sup>9</sup> .....	754 railroads .....	8,829,303 responses .....	N/A .....	232,525	17,599,370

*Total Estimated Annual Responses:* 8,829,303.

*Total Estimated Annual Burden:* 232,525 hours.<sup>10</sup>

*Total Estimated Annual Burden Hour Dollar Cost Equivalent:* \$17,599,370.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct, or sponsor a collection of information that does not display a currently valid OMB control number.

<sup>5</sup> The current inventory exhibits a total burden of 3,815,751 hours while the total burden of this notice is 232,348 hours. As part of its review of this ICR renewal, FRA determined many of the previous estimates were preliminary, outdated, or duplicative. Moreover, FRA removed improperly included locomotive safety requirements, which are outside the scope of burdens under the PRA, thus decreasing the total estimates accordingly in this notice.

<sup>6</sup> The dollar equivalent cost is derived from the Surface Transportation Board's 2020 Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

<sup>7</sup> As discussed above, the 2018 estimates for § 229.21(a) and (b) incorrectly included the time associated with the performance of daily inspections, which should not have been included in the estimated paperwork burden. The burdens associated with the performance of daily inspections were addressed when FRA calculated the economic costs of the regulatory requirements. Thus, FRA has adjusted the estimated paperwork burden in the PRA table above so that it does not include activities outside of the scope of the PRA.

<sup>8</sup> FRA is proposing to create a new form for use by passenger railroads, Form F 6180-49AP (Passenger Locomotive Inspection and Repair Record), under OMB control number 2130-0035. Once the new form is approved, FRA will move this under the proposed 49 CFR 229.22 of OMB 2130-0035.

<sup>9</sup> Totals may not add due to rounding.

<sup>10</sup> The current inventory exhibits a total burden of 3,815,751 hours while the total burden of this notice is 232,525 hours. As part of its review of this ICR renewal, FRA determined many of the previous estimates were preliminary, outdated, or duplicative. Moreover, FRA removed locomotive safety requirements outside the scope of the PRA, thus decreasing the total estimates accordingly in this notice.

*Authority:* 44 U.S.C. 3501–3520.

**Brett A. Jortland,**  
Deputy Chief Counsel.  
[FR Doc. 2021-26789 Filed 12-9-21; 8:45 am]  
**BILLING CODE 4910-06-P**

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

[Docket Number MARAD-2021-0270]

**Request for Determination for Aquaculture Support Operations for the 2022 Calendar Year: COLBY PERCE, RONJA CARRIER, SADIE JANE, MISS MILDRED 1, KC COMMANDER**

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** Pursuant to a delegation of authority from the Secretary of Transportation, the Maritime Administrator is authorized to issue a determination allowing documented vessels with only registry endorsements or foreign flag vessels to be used in operations that treat aquaculture fish or protect aquaculture fish from disease, parasitic infestation, or other threats to their health when suitable vessels of the United States are not available that could perform those services. A request for such a determination has been received by the Maritime Administration (MARAD). This notice is being published to solicit comments intended to assist MARAD in determining whether suitable vessels of the United States are available that could perform the required services. If no suitable U.S.-flag vessels are available, the Maritime Administrator may issue a determination necessary to comply with USCG Aquaculture Support regulations. A brief description of the proposed aquaculture support service is listed in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** Submit comments on or before January 10, 2022.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0270 by any of the following methods:

- *On-line via the Federal Electronic Portal:* <http://www.regulations.gov>.

Search using “MARAD-2021-0270” and follow the instructions for submitting comments.

- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590. Submit comments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

*Reference Materials and Docket Information:* You may view the complete application, including the aquaculture support technical service requirements, and all public comments at the DOT Docket on-line via <http://www.regulations.gov>. Search using “MARAD-2021-0270.” All comments received will be posted without change to the docket, including any personal information provided. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Meurer, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-461, Washington, DC 20590. Email: [Jennifer.Meurer@dot.gov](mailto:Jennifer.Meurer@dot.gov). If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647-5527.

**SUPPLEMENTARY INFORMATION:** As a result of the enactment of the Coast Guard Authorization Act of 2010, codified at 46 U.S.C. 12102, the Secretary of Transportation has the discretionary authority to issue determinations allowing documented vessels with registry endorsements or foreign flag vessels to be used in operations that treat aquaculture fish for or protect

aquaculture fish from disease, parasitic infestation, or other threats to their health when suitable vessels of the United States are not available that could perform those services. The Secretary has delegated this authority to the Maritime Administrator. Pursuant to this authority, MARAD is providing notice of the service requirements proposed by Cooke Aquaculture (Cooke) in order to make a U.S.-flag vessel availability determination. Specifics can be found in Cooke's application letter posted in the docket.

To comply with USCG Aquaculture Support regulations at 46 CFR part 106, Cooke is seeking a MARAD Aquaculture Determination to operate the vessels, COLBY PERCE, RONJA CARRIER, SADIE JANE, MISS MILDRED 1, KC COMMANDER, as follows:

*Intended Commercial Use of Vessel:* "to use highly-specialized foreign-flag vessels referred to as a "wellboat" (or "live fish carrier") to treat Cooke's swimming inventory of farmed Atlantic salmon in the company's salt-water grow-out pens off Maine's North Atlantic Coast. This treatment prevents against parasitic infestation by sea lice that is highly destructive to the salmon's health."

*Geographic Region:* "off Maine's North Atlantic Coast".

*Requested Time Period:* "2022 calendar year, from January 1, 2022 to December 31, 2022".

Interested parties may submit comments providing detailed information relating to the availability of U.S.-flag vessels to perform the required aquaculture support services. If MARAD determines, in accordance with 46 U.S.C. 12102(d)(1) and MARAD's regulations at 46 CFR part 388, that suitable U.S.-flag vessels are available to perform the required services, a positive determination allowing for the use of the vessels will not be granted.

Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments

should also state the commenter's interest in the application, and address the criteria set forth in 46 CFR 388.4.

In accordance with 5 U.S.C. 553(c), MARAD solicits comments from the public to inform its process to determine the availability of suitable vessels. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

#### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

(Authority: 49 CFR 1.93(w))

Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2021-26833 Filed 12-9-21; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, U.S. Department of the 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 based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for effective date(s).

#### FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley Smith, Acting 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 (<https://www.treasury.gov/ofac>).

#### Notice of OFAC Action(s)

On December 2, 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.

**BILLING CODE 4810-AL-P**

**Individuals:**

1. BASKAU, Dzmitriy Yurievich (Cyrillic: БАСКАЎ, Дзмітрый Юр'евіч) (a.k.a. BASKAU, Dzmitry; a.k.a. BASKOV, Dmitriy; a.k.a. BASKOV, Dmitriy Yurievich (Cyrillic: БАСКОВ, Дмитрий Юрьевич); a.k.a. BASKOV, Dmitry), ul. M. Bogdanovicha, d. 124, kv. 68, Minsk, Belarus; DOB 25 Aug 1978; POB Minsk, Belarus; nationality Belarus; Gender Male; Passport MP3727671 (Belarus) issued 16 Sep 2015; National ID No. 3250878A013PB7 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to sections 1(a)(i)(B) and 1(a)(iii) of Executive Order 14038 of August 9, 2021, "Blocking Property of Additional Persons Contributing to the Situation in Belarus," 86 FR 43905, 3 CFR 14038 (E.O. 14038), for being or having been a leader, official, senior executive officer, or member of the board of directors of an entity whose property and interests in property are blocked pursuant to E.O. 14038 or E.O. 13405, and for being or having been a leader or official of the Government of Belarus.

2. ALYOKSA, Aleksandr Ivanovich (Cyrillic: АЛЁКСА, Александр Иванович), 12-27 Golubka St., Minsk, Belarus (Cyrillic: 12-27, ул. Голубка, г. Минск, Belarus); DOB 07 Apr 1978; nationality Belarus; Gender Male; National ID No. 3070478A082PB7 (Belarus); Tax ID No. AB8645179 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

3. BEDUNKEVICH, Mikhail Petrovich (Cyrillic: БЕДУНКЕВИЧ, Михаил Петрович) (a.k.a. BEDUNKEVICH, Mikhail), Golubka St., 12-43, Minsk, Belarus (Cyrillic: ул. Голубка, 12-43, г. Минск, Belarus); DOB 08 Oct 1977; nationality Belarus; Gender Male; National ID No. 3081077M065PB7 (Belarus); Tax ID No. AC4352590 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

4. CHEMODANOV, Denis Grigorievich (Cyrillic: ЧЕМОДАНОВ, Денис Григорьевич) (a.k.a. CHEMODANOV, Denis), 40-let Pobyedy St., 34-41, Borovlyany village, Minsk Region, Belarus (Cyrillic: ул. 40-лет Победы 34-41, Боровляны, Минский р-н д., Belarus); DOB 11 Sep 1977; nationality Belarus; Gender Male; National ID No. 3110977B057PB9 (Belarus); Tax ID No. КА6808948 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

5. KOVACH, Dmitriy Aleksandrovich (Cyrillic: КОВАЧ, Дмитрий Александрович), Myastrovskaya St., 24-63, Minsk, Belarus (Cyrillic: ул. Мястровская, 24-63, г. Минск, Belarus); DOB 14 Jan 1979; nationality Belarus; Gender Male; National ID No. 3140179M004PB1 (Belarus); Tax ID No. МА6914146 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

6. LARIN, Oleg Valentinovich (Cyrillic: ЛАРИН, Олег Валентинович) (a.k.a. LARIN, Oleg), Yesenina st., 79-108, Minsk, Belarus (Cyrillic: ул. Есенина, 79-108, г. Минск, Belarus); DOB 09 Oct 1973; nationality Belarus; Gender Male; National ID No. 3091073M001PB6 (Belarus); Tax ID No. АВ6103853 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

7. MAKAREVICH, Andrei Iosifovich (Cyrillic: МАКАРЕВИЧ, Андрей Иосифович), 135A-81, Prospekt Pobyediteley, Minsk, Belarus (Cyrillic: 135А-81, пр-т Победителей, Минск, Belarus); DOB 09 May 1984; nationality Belarus; Gender Male; National ID No. 3090584A072PB8 (Belarus); Tax ID No. АС1072277 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

8. PARSHIN, Andrei Yevgenevich (Cyrillic: ПАРШИН, Андрей Евгеньевич) (a.k.a. PARSHIN, Andrey; a.k.a. PARSHIN, Andrey Yevgenievich), Skryganova St., Building 4A, Apt. 211, Minsk, Belarus (Cyrillic: Скрыганова ул., д. 4А, кв. 211, г. Минск, Belarus); DOB 19 Feb 1974; nationality Belarus; Gender Male; National ID No. 3190274A018PB7 (Belarus); Tax ID No. АА1060533 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

9. SYSOYEV, Vasily Vasilievich (Cyrillic: СЫСОЕВ, Василий Васильевич), Syrokomli St., 48-73, Minsk, Belarus (Cyrillic: ул. Сырокомли, 48-73, г. Минск, Belarus); DOB 01 Aug 1974; nationality Belarus; Gender Male; National ID No.

3010874A112PB7 (Belarus); Tax ID No. AC2366486 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

10. VASHKEVICH, Vladimir Vladimirovich (Cyrillic: ВАШКЕВИЧ, Владимир Владимирович) (a.k.a. VASHKEVICH, Vladimir), 99-1-39, Маяковського St., Minsk, Belarus (Cyrillic: 99-1-39, ул. Маяковского, г. Минск, Belarus); DOB 29 Nov 1977; nationality Belarus; Gender Male; National ID No. 3291177B038PB2 (Belarus); Tax ID No. AB3145969 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

11. ZHIVLYUK, Aleksandr Pavlovich (Cyrillic: ЖИВЛЮК, Александр Павлович), 62-164 Sukharevskaya St., Minsk, Belarus (Cyrillic: 62-164 ул. Сухаревская, г. Минск, Belarus); DOB 13 Jan 1981; nationality Belarus; Gender Male; National ID No. 3130181C043PB0 (Belarus); Tax ID No. BA9295684 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

12. BUTKEVICH, Ihar Yauhenavich (Cyrillic: БУТКЕВИЧ, Ігар Яўгенавіч) (a.k.a. BUTKEVICH, Igor; a.k.a. BUTKEVICH, Igor Yevgenievich (Cyrillic: БУТКЕВИЧ, Игорь Евгеньевич)), Minsk, Belarus; DOB 1969; POB Rakovtsy village, Smorgonskiy district, Grodno oblast, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

13. GUTNIK, Igor Nikolaevich (Cyrillic: ГУТНИК, Игорь Николаевич) (a.k.a. GUTNIK, Igor (Cyrillic: ГУТНИК, Игорь)), Brest, Belarus; DOB 17 Dec 1974; POB Zabolotye village, Smolevichskiy district, Minsk oblast, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

14. LAPRO, Anatol Piatrovich (Cyrillic: ЛАПО, Анатоль Пятровіч) (a.k.a. LAPRO, Anatol; a.k.a. LAPPO, Anatoliy Petrovich (Cyrillic: ЛАППО, Анатолий Петрович); a.k.a. LAPPO, Anatoly), ul. Yana Chechota 26, kv. 63, Minsk, Belarus (Cyrillic: ул. Яна Чечота 26, кв. 63, Минск, Belarus); Community Garden Voskhod-1, 22, Korenevskiy village council, Grodno oblast, Belarus (Cyrillic: сад.тов-во Восход-1, 22, Кореневский с/с, Гродненская обл., Belarus); DOB 24 May 1963; POB Kulakovka village, Belynichskiy district, Mahilyow oblast, Belarus; nationality Belarus; Gender Male; National ID No. 3240563K033PB5 (Belarus) (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

15. MOLOSTOV, Konstantin Gennadievich (Cyrillic: МОЛОСТОВ, КОНСТАНТИН Геннадьевич), Grodno, Belarus; DOB 30 May 1970; POB Krasnoarmeysk, Saratov Oblast, Russia; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

16. NOVIKAU, Siarhei Ihnataovich (Cyrillic: НОВИКАЎ, Сяргей Ігнатавіч) (a.k.a. NOVIKOV, Sergey Ignatovich (Cyrillic: НОВИКОВ, Сергей Игнатович)), Minsk, Belarus; DOB 1968; POB Uvarovich, Buda-Koshelevskyy district, Homyel oblast, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

17. PECHAN, Ihar Mikalaevich (Cyrillic: ПЕЧАЊ, Ігар Мікалаевіч) (a.k.a. PECHEN, Igor Nikolaevich (Cyrillic: ПЕЧЕНЬ, Игорь Николаевич)), Minsk, Belarus; DOB 01 May 1965; POB Smolensk, Russia; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

18. PODLINEU, Raman Leanidavich (Cyrillic: ПОДЛІНЕЎ, Раман Леанідавіч) (a.k.a. PODLINEV, Roman; a.k.a. PODLINEV, Roman Leonidovich (Cyrillic: ПОДЛИНЕВ, Роман Леонидович)), Minsk, Belarus; DOB 1976; POB Kazanka, Nikolaev Oblast, Ukraine; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

19. KORZYUK, Dmitriy Mikhaylovich (Cyrillic: КОРЗІЮК, Дмитрий Михайлович) (a.k.a. KORZYUK, Dmitriy (Cyrillic: КОРЗІЮК, Дмитрий)), Belarus; DOB 06 Oct 1971; POB Minsk, Belarus; nationality Belarus; Gender Male (individual) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iii) of E.O. 14038 for being or having been a leader or official of the Government of Belarus.

20. LUKASHENKA, Dzmitry Aliksandravich (Cyrillic: ЛУКАШЭЊКА, Дзмітрый Аляксандравіч) (a.k.a. LUKASHENKA, Dzmitry; a.k.a. LUKASHENKO, Dmitri Aleksandrovich; a.k.a. LUKASHENKO, Dmitriy (Cyrillic: ЛУКАШЕНКО, Дмитрий); a.k.a. LUKASHENKO, Dmitry; a.k.a. LUKASHENKO, Dmitry Aleksandrovich (Cyrillic: ЛУКАШЕНКО, Дмитрий Александрович)), Belarus; DOB 23 Mar 1980; POB Mahilyow, Belarus; nationality Belarus; Gender Male (individual) [BELARUS].

Designated pursuant to section 1(a)(ii)(C) of Executive Order 13405 of June 16, 2006, "Blocking Property of Certain Persons Undermining Democratic Processes or Institutions

in Belarus,” 71 FR 35485, 3 CFR 13405 (E.O. 13405), for being a senior-level official, a family member of such an official, or a person closely linked to such an official who is responsible for or has engaged in public corruption related to Belarus.

**Entities:**

1. AGROROZKVIT LLC (Cyrillic: ООО АГРОПОЗКВИТ) (a.k.a. AGROROZKVIT TOV; a.k.a. TOVARYSTVO Z OBMEZHENOYU VIDPOVIDALNISTYU AGROROZKVIT), Bud. 44b Inshe Poverkh 2, vul. Evgena Konovaltsya Pechersky R-N, Kyiv 01133, Ukraine; Organization Established Date 07 May 2016; Registration Number 406289726553 (Ukraine) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or a person whose property and interests in property are blocked pursuant to E.O. 14038.

2. FOREIGN LIMITED LIABILITY COMPANY SLAVKALI (a.k.a. INOSTRANNOYE OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU SLAVKALIY (Cyrillic: ИНОСТРАННОЕ ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СЛАВКАЛИЙ); a.k.a. IOOO SLAVKALI (Cyrillic: IOOO СЛАВКАЛИЙ); a.k.a. SLAVKALI INOSTRANNOE OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTIYU; a.k.a. SLAVKALI IOOO; a.k.a. SLAVKALIY (Cyrillic: СЛАВКАЛИЙ); a.k.a. SLAVKALY FLLC; a.k.a. ZAMEZHNAYE TAVARYSTVA Z ABMEZHAVANAY ADKAZNASTSYU SLAUKALIY (Cyrillic: ЗАМЕЖНАЕ ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ СЛАЎКАЛІЙ); a.k.a. ZTAA SLAUKALIY (Cyrillic: ЗТАА СЛАЎКАЛІЙ)), Lyubanskiy District, Pervomaiskaya St, Building 35, Office 3.1, Lyuban City, Minsk Oblast 223810, Belarus (Cyrillic: Любанский район, ул. Первомайская, д. 35, каб. 3.1, г. Любань, Минская область 223810, Belarus); d. 35, kab. 3.1, ul. Pervomaiskaya g. s/s, Lyuban Lyubanski Raion, Minskaya Obl. 223810, Belarus; Organization Established Date 25 Oct 2011; Registration Number 191689538 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the potassium chloride (potash) sector of the economy of Belarus.

3. OPEN JOINT STOCK COMPANY BELARUSIAN POTASH COMPANY (a.k.a. ААТ БЕЛАРУСКАЯ КАЛІЙНАЯ КАМПАНІЯ (Cyrillic: ААТ БЕЛАРУСКАЯ КАЛІЙНАЯ КАМПАНІЯ); a.k.a. ADKRYTAYE AKTSYANERNAYE TAVARYSTVA BELARUSKAYA KALIYNAYA KAMPANIYA (Cyrillic: АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА БЕЛАРУСКАЯ КАЛІЙНАЯ КАМПАНІЯ); a.k.a. BELARUSIAN POTASH COMPANY (Cyrillic: БЕЛОРУССКАЯ КАЛІЙНАЯ КОМПАНІЯ); a.k.a. BELORUSSKAYA KALINAYA KOMPANIYA OAO; a.k.a. JSC BELARUSIAN POTASH COMPANY; a.k.a. OAO BELORUSSKAYA KALIYNAYA KOMPANIYA (Cyrillic: OAO БЕЛОРУССКАЯ КАЛІЙНАЯ КОМПАНІЯ); a.k.a. OJSC BELARUSIAN POTASH COMPANY; a.k.a. OTKRYTOYE AKTSIONERNOYE OBSHCHESTVO BELORUSSKAYA KALIYNAYA KOMPANIYA (Cyrillic: ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО БЕЛОРУССКАЯ КАЛІЙНАЯ КОМПАНІЯ)), Masherova Ave, Building 35, Room



644, Minsk 220002, Belarus (Cyrillic: пр-т Машерова, д. 35, пом. 644, Минск 220002, Belarus); Organization Established Date 13 Sep 2013; Registration Number 192050251 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the potassium chloride (potash) sector of the economy of Belarus.

4. REPUBLICAN UNITARY ENTERPRISE TSENTRKURORT (a.k.a. CENTRKURORT; a.k.a. DZYARZHAUNAYE PRADPRYEMSTVA TSENTRKURORT (Cyrillic: ДЗЯРЖАЎНАЕ ПРАДПРЫЕМСТВА ЦЭНТРКУРОРТ); a.k.a. GOSUDARSTVENNOYE PREDPRIYATIYE TSENTRKURORT (Cyrillic: ГОСУДАРСТВЕННОЕ ПРЕДПРИЯТИЕ ЦЭНТРКУРОРТ); a.k.a. RESPUBLIKANSKAYE UNITARNAYE PRADPRYEMSTVA TSENTRKURORT (Cyrillic: РЭСПУБЛІКАНСКАЕ ЎНІТАРНАЕ ПРАДПРЫЕМСТВА ЦЭНТРКУРОРТ); a.k.a. RESPUBLIKANSKOYE UNITARNOYE PREDPRIYATIYE TSENTRKURORT (Cyrillic: РЭСПУБЛІКАНСКОЕ УНІТАРНОЕ ПРЕДПРИЯТИЕ ЦЭНТРКУРОРТ); a.k.a. STATE ENTERPRISE TSENTRKURORT; a.k.a. TSENTRKURORT), ul. Myasnikova, d. 39, kom. 338, Minsk 220048, Belarus (Cyrillic: ул. Мясникова, д. 39, ком. 338, г. Минск 220048, Belarus); Organization Established Date 19 Jul 2000; Organization Type: Tour operator activities; alt. Organization Type: Travel agency activities; Target Type State-Owned Enterprise; Registration Number 100726604 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or a person whose property and interests in property are blocked pursuant to E.O. 14038.

5. OOO GARDSERVIS (Cyrillic: ООО ГАРДСЕРВИС) (f.k.a. BELSECURITYGROUP; a.k.a. GARDSERVICE; f.k.a. LIMITED LIABILITY COMPANY BELSEKYURITIGRUPP (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ БЕЛСЕКЬЮРИТИГРУПП); a.k.a. OBNICHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU GARDSERVIS (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ ГАРДСЕРВИС); a.k.a. ТАА HARDSERVIS (Cyrillic: ТАА ГАРДСЭРВИС); a.k.a. TAVARYSTVA Z ABMEZHAVANAY ADKAZNASTSYU HARDSERVIS (Cyrillic: ТАВАРЫСТВА З АБМЕЖАВАНАЙ АДКАЗНАСЦЮ ГАРДСЭРВИС)), Karvata St., Building 85, Minsk 220138, Belarus (Cyrillic: ул. Карвата, д. 85, Минск 220138, Belarus); Organization Established Date 19 Nov 2019; Registration Number 193344802 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the security sector of the economy of Belarus.

6. PELENG JSC (Cyrillic: ПЕЛЕНГ) (f.k.a. CENTRAL DESIGN DEPARTMENT PELENG; f.k.a. ENGINEERING DEPARTMENT OF VAVILOVA PLANT; a.k.a. PELENG JOINT-STOCK COMPANY; a.k.a. PELENG OAO), 25 Makayonka St., Minsk 220114, Belarus; 25 Makaenka St., Minsk 220114, Belarus; Organization Established Date 11 Mar 1994; Government Gazette Number 07526946 (Belarus); Registration Number 100230519 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the security sector of the economy of Belarus, and for operating or having operated in the defense and related materiel sector of the economy of Belarus.

7. CJSC BELTECHEXPORT (Cyrillic: ЗАО БЕЛТЕХЭКСПОРТ) (a.k.a. BELTECHEXPORT; a.k.a. BELTECHEXPORT COMPANY; a.k.a. BELTECHEXPORT COMPANY CJSC), Nezavisimosti Ave. 86-B, Minsk 220012, Belarus; Organization Established Date 26 Jan 1993 [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the economy of Belarus.

8. KIDMA TECH OJSC (a.k.a. ААТ КІДМА ТЕК (Cyrillic: ААТ КІДМА ТЭЖ); a.k.a. АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА КІДМА ТЕК (Cyrillic: АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА КІДМА ТЕК); f.k.a. BSVT - NEW TECHNOLOGIES; f.k.a. BSVT-NT; a.k.a. ОАО КИДМА ТЕК (Cyrillic: ОАО КИДМА ТЕК); f.k.a. OBSHCHESTVO S OGRANICHENNOY OTVETSTVENNOSTYU BSVT-NOVIYE TEKHNologii (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ БСВТ-НОВЫЕ ТЕХНОЛОГИИ); a.k.a. ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО КИДМА ТЕК (Cyrillic: ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО КИДМА ТЕК)), Room 20, Administrative Building 187, Soltysa St., Minsk 220070, Belarus; D. 5/1, Ustenskiy Selsovyet, Vitebskaya Oblast, Orshanskiy Rayon, Ag. Ustye 211003, Belarus (Cyrillic: Д. 5/1, Устенский сельсовет, Витебская Область, Оршанский Район, аг. Устье 211003, Belarus); Organization Established Date 18 Jul 2012; Registration Number 191607211 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(iv) of E.O. 14038 for operating or having operated in the defense and related materiel sector of the economy of Belarus.

9. JSC TRANSAVIAEXPORT AIRLINES (a.k.a. ААТ Авіакампанія Трансавіяэкспарт) (Cyrillic: ААТ АВІАКАМПАЊІЯ ТРАНСАВІЯЭКСПАРТ); a.k.a. АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА Авіакампанія Трансавіяэкспарт (Cyrillic: АДКРЫТАЕ АКЦЫЯНЕРНАЕ ТАВАРЫСТВА АВІАКАМПАЊІЯ ТРАНСАВІЯЭКСПАРТ); a.k.a. AVIAKOMPANIYA TRANSAVIAEKSPORT ОАО; a.k.a. JOINT STOCK COMPANY TRANSAVIAEXPORT AIRLINES; a.k.a. ОАО АВИАКОМПАНИЈА ТРАНСАВИАЭКСПОРТ (Cyrillic: ОАО АВИАКОМПАНИЈА ТРАНСАВИАЭКСПОРТ); a.k.a. ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО АВИАКОМПАНИЈА TRANSAVIAEKSPORT; a.k.a. TRANSAVIAEXPORT AIRLINES), 44, Zakharova Str., Minsk 220034, Belarus (Cyrillic: Ул. Захарова, 44, Минск 220034, Belarus); Organization Established Date 28 Dec 1992; Registration Number 100027245 (Belarus) [BELARUS-EO14038].

Designated pursuant to sections 1(a)(iv) and 1(a)(vii) of E.O. 14038 for operating or having operated in the transportation sector of the economy of Belarus, and for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or a person whose property and interests in property are blocked pursuant to E.O. 14038.

10. AGAT ELECTROMECHANICAL PLANT OJSC (a.k.a. AGAT – ELECTROMECHANICAL PLANT JSC; a.k.a. AGAT-ELECTROMECHANICAL PLANT; a.k.a. AGAT-ELEKTROMEKHANICHESKI ZAVOD, OAO (Cyrillic: OAO АГАТ-ЭЛЕКТРОМЕХАНИЧЕСКИЙ-ЗАВОД); a.k.a. JSC AGAT – ELECTROMECHANICAL PLANT), 117, bld. 3, Nezavisimosti Ave., Minsk 220114, Belarus; Nezavisimosti ave. 115, Minsk 220114, Belarus; 6 Volgogradskaya St., Minsk 220012, Belarus; Organization Established Date 23 Feb 1993; Target Type State-Owned Enterprise; Registration Number 100093400 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or a person whose property and interests in property are blocked pursuant to E.O. 14038.

11. JOINT STOCK COMPANY 140 REPAIR PLANT (a.k.a. 140 REMONTNY ZAVOD OAO; a.k.a. 140 REMONTNYI ZAVOD OAO (Cyrillic: OAO 140 РЕМОНТНЫЙ ЗАВОД); a.k.a. 140 REPAIR PLANT JOINT STOCK COMPANY; a.k.a. 140 REPAIR PLANT OPEN JOINT STOCK COMPANY; a.k.a. 140TH REPAIR PLANT JSC; a.k.a. JSC 140 REPAIR PLANT; a.k.a. OJSC 140 REPAIR PLANT), 19, Chalovskaya St., Borisov, Minsk Region 222512, Belarus; 19, L. Chalovskoi Str., Borisov 222512, Belarus; Organization Established Date 23 Dec 2009; Target Type State-Owned Enterprise; Government Gazette Number 14512525 (Belarus); Registration Number 600136102 (Belarus) [BELARUS-EO14038].

Designated pursuant to section 1(a)(vii) of E.O. 14038 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Belarus or a person whose property and interests in property are blocked pursuant to E.O. 14038.

12. REPUBLICAN STATE PUBLIC ASSOCIATION PRESIDENTIAL SPORTS CLUB (a.k.a. PREZIDENTSKI SPARTYUNY KLUB (Cyrillic: ПРЕЗИДЕНЦКІ СПАРТЫЎНЫ КЛУБ); a.k.a. PREZIDENTSKIY SPORTIVNIY KLUB (Cyrillic: ПРЕЗИДЕНТСКИЙ СПОРТИВНЫЙ КЛУБ); a.k.a. RESPUBLIKANSKAYE DZYARZHAUNA-HRAMADSKAYE ABYADNANNYE PREZIDENTSKI SPARTYUNY KLUB (Cyrillic: РЭСПУБЛІКАНСКАЕ ДЗЯРЖАЎНА-ГРАМАДСКАЕ АБ'ЯДНАННЕ ПРЕЗИДЕНЦКІ СПАРТЫЎНЫ КЛУБ); a.k.a. RESPUBLIKANSKOYE GOSUDARSTVENNO-OBSHCHESTVENNOYE OBYEDINENIE PREZIDENTSKIY SPORTIVNIY KLUB (Cyrillic: РЕСПУБЛИКАНСКОЕ ГОСУДАРСТВЕННО-ОБЩЕСТВЕННОЕ ПРЕЗИДЕНТСКИЙ СПОРТИВНЫЙ КЛУБ); a.k.a. "PRESIDENTIAL SPORTS CLUB"), ul. Starovilenskaya, d. 4, Minsk 220029, Belarus (Cyrillic: ул. Старовиленская, д. 4, г. Минск 220029, Belarus); Organization Established Date 07 Jul 2005; Registration Number 805000023 (Belarus) [BELARUS].

Designated pursuant to section 1(a)(ii)(E) of E.O. 13405 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, a person listed in or designated pursuant to E.O. 13405.

**Aircraft:**

1. EW-001PH; Aircraft Manufacture Date 2018; Aircraft Model Agusta-Westland AW-139; Aircraft Manufacturer's Serial Number (MSN) 31835 (aircraft) [BELARUS-EO14038] (Linked To: FOREIGN LIMITED LIABILITY COMPANY SLAVKALI).

Identified pursuant to E.O. 14038 as property in which FOREIGN LIMITED LIABILITY COMPANY SLAVKALI, an entity whose property and interests in property are blocked pursuant to E.O. 14038, has an interest.

2. EW-78779; Aircraft Manufacture Date 1988; Aircraft Model IL-76TD; Aircraft Manufacturer's Serial Number (MSN) 83489662 (aircraft) [BELARUS-EO14038] (Linked To: JSC TRANSAVIAEXPORT AIRLINES).

Identified pursuant to E.O. 14038 as property in which JSC TRANSAVIAEXPORT AIRLINES, an entity whose property and interests in property are blocked pursuant to E.O. 14038, has an interest.

3. EW-78843; Aircraft Manufacture Date 1990; Aircraft Model IL-76TD; Aircraft Manufacturer's Serial Number (MSN) 1003403082 (aircraft) [BELARUS-EO14038] (Linked To: JSC TRANSAVIAEXPORT AIRLINES).

Identified pursuant to E.O. 14038 as property in which JSC TRANSAVIAEXPORT AIRLINES, an entity whose property and interests in property are blocked pursuant to E.O. 14038, has an interest.

Dated: December 6, 2021.

**Bradley T. Smith,**

*Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2021-26758 Filed 12-9-21; 8:45 am]

**BILLING CODE 4810-AL-C**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### **Proposed Collection; Comment Request for Guidance on Reporting Interest Paid to Nonresident Aliens**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments for guidance on reporting interest paid to nonresident aliens.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning guidance on reporting interest paid to nonresident aliens.

**DATES:** Written comments should be received on or before February 8, 2022 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317-5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Guidance on Reporting Interest Paid to Nonresident Aliens.

*OMB Number:* 1545-1725.

*Regulation Project Number:* TD 9584.

*Abstract:* This document contains final regulations that provide guidance on the reporting requirements for interest on deposits maintained at the U. S. office of certain financial institutions and paid to nonresident alien individuals. These proposed regulations affect persons making payments of interest with respect to such a deposit.

*Current Actions:* There is no change to the existing regulation or burden at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated Number of Respondents:* 2,000.

*Estimated Time per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 5,000 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 6, 2021.

**Kerry L. Dennis,**  
*Tax Analyst.*

[FR Doc. 2021-26703 Filed 12-9-21; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF TREASURY

### Internal Revenue Service

#### Electronic Tax Administration Advisory Committee (ETAAC) Nominations

**AGENCY:** Internal Revenue Service,  
Department of Treasury.

**ACTION:** Request for nominations.

**SUMMARY:** The Internal Revenue Service (IRS) is requesting applications from individuals with experience in such areas as state tax administration, cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, public administration, and consumer advocacy to be considered for selection as members of the Electronic Tax Administration Advisory Committee (ETAAC).

**DATES:** Written nominations must be received on or before Jan. 31, 2022.

**ADDRESSES:** Applications may be submitted via fax to 855-811-8020 or via email to [PublicLiaison@irs.gov](mailto:PublicLiaison@irs.gov). Application packages are available on the IRS website at <https://www.irs.gov/e-file-providers/apply-for-membership-on-the-electronic-tax-administration-advisory-committee-etaac>. Application packages may also be requested by telephone from National Public Liaison, 202-317-6247 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Sean Parman at (202) 317-6247, or send an email to [publicliaison@irs.gov](mailto:publicliaison@irs.gov).

**SUPPLEMENTARY INFORMATION:** The IRS strongly encourages representatives from consumer groups with an interest in tax issues to apply.

Nominations should describe and document the proposed member's qualifications for ETAAC membership, including the applicant's knowledge of regulations and the applicant's past or current affiliations and involvement with the particular tax segment or segments of the community that the applicant wishes to represent on the committee. Applications will be accepted for current vacancies from qualified individuals and from professional and public interest groups that wish to have representation on ETAAC. Submissions must include an application and resume.

ETAAC provides continuing input into the development and implementation of the IRS organizational strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues—such as prevention of identity theft-related refund fraud—in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members work closely with the Security Summit, a joint effort of the IRS, state tax administrators and the nation's tax industry, to fight identity theft and refund fraud. ETAAC members convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs and procedures, and suggest improvements.

This is a volunteer position. Members will serve three-year terms on the ETAAC to allow for a rotation in membership and ensure different perspectives are represented. Travel expenses within government guidelines will be reimbursed. In accordance with Department of Treasury Directive 21-03, a clearance process including fingerprints, annual tax checks, a Federal Bureau of Investigation criminal check and a practitioner check with the Office of Professional Responsibility will be conducted.

The establishment and operation of the Electronic Tax Administration

Advisory Committee (ETAAC) is required by the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98), Title II, Section 2001(b)(2). ETAAC follows a charter in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C., app. 2. The ETAAC provides continued input into the development and implementation of the IRS's strategy for electronic tax administration. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration. Members will provide an annual report to Congress by June 30.

Applicants must complete the application form, which includes describing and documenting the applicant's qualifications for ETAAC membership. Applicants must submit a short one or two-page statement including recent examples of specific skills and qualifications as they relate to: cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, consumer advocacy and public administration. Examples of critical thinking, strategic planning and oral and written communication are desirable.

An acknowledgement of receipt will be sent to all applicants.

Equal opportunity practices will be followed in all appointments to the ETAAC in accordance with Department of Treasury and IRS policies. The IRS has a special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities have an opportunity to serve on advisory committees. Therefore, IRS extends particular encouragement to nominations from such appropriately qualified individuals.

Dated: December 6, 2022.

**John A. Lipold,**  
*Designated Federal Official.*

[FR Doc. 2021-26776 Filed 12-9-21; 8:45 am]

**BILLING CODE P**



# FEDERAL REGISTER

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Part II

## Department of Education

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34 CFR Part 75

Final Priorities and Definitions—Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs; Final Rule

**DEPARTMENT OF EDUCATION****34 CFR Part 75**

[Docket ID ED–2021–OPEPD–0054]

**Final Priorities and Definitions—  
Secretary’s Supplemental Priorities  
and Definitions for Discretionary  
Grants Programs****AGENCY:** U.S. Department of Education.**ACTION:** Final priorities and definitions.

**SUMMARY:** In order to support a comprehensive and ambitious education agenda, the Secretary issues six priorities and related definitions for use in currently authorized discretionary grant programs or programs that may be authorized in the future. The Secretary may choose to use an entire priority for a grant program or a particular competition or use one or more of the priority’s subparts. These priorities and definitions replace the Supplemental Priorities published in the **Federal Register** on March 2, 2018, the Opportunity Zones final priority published on November 27, 2019, and the Remote Learning priority published on December 30, 2020. However, if a notice inviting applications (NIA) published before the effective date of this notice of final priorities and definitions included one or more of those priorities, the included priorities apply to that competition.

**DATES:** These priorities and definitions are effective January 10, 2022.

**FOR FURTHER INFORMATION CONTACT:** Dr. Nkemjika Ofodile-Carruthers, U.S. Department of Education, 400 Maryland Avenue SW, Room 4W308, Washington, DC 20202. Telephone: (202) 401–4389. Email: [Nkemjika.ofodile-carruthers@ed.gov](mailto:Nkemjika.ofodile-carruthers@ed.gov).

**SUPPLEMENTARY INFORMATION:****Executive Summary**

*Purpose of This Regulatory Action:* The Secretary has outlined a comprehensive and ambitious education agenda that reflects the Secretary’s vision for American education. This vision is based on a fundamental respect for the dignity and potential of every student and their access to educational opportunity. These final priorities are aligned with evidence-based (as defined in this document) and capacity-building approaches to addressing various interconnected policy issues in the Nation’s education system. These final priorities and definitions may be used across the Department of Education’s (the Department) discretionary grant programs to further the Department’s mission, which is “to promote student

achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.”

*Summary of the Major Provisions of This Regulatory Action:* Through this regulatory action, we establish six supplemental priorities and associated definitions. Each major provision is discussed in the *Public Comment* section of this document.

*Costs and Benefits:* The final priorities and definitions will impose minimal costs on entities that receive assistance through the Department’s discretionary grant programs. Application submission and participation in a discretionary grant program are voluntary. The Secretary believes that the costs imposed on applicants by the final priorities are limited to paperwork burden related to preparing an application for a discretionary grant program that is using one or more of the final priorities in its competition. Because the costs of carrying out activities will be paid for with program funds, the costs of implementation will not be a burden for any eligible applicants, including small entities.

We believe that the benefits of this regulatory action outweigh any associated costs because it will result in the submission of a greater number of high-quality discretionary grant applications and supporting activities that reflect the Administration’s educational priorities.

*Program Authority:* 20 U.S.C. 1221e–3.

We published a notice of proposed supplemental priorities and definitions (NPP) in the **Federal Register** on June 30, 2021 (86 FR 34664). That document contained background information and our reasons for proposing the priorities and definitions.

There are differences between the proposed priorities and definitions and the final priorities and definitions established in this notice of final priorities and definitions (NFP), as discussed in the *Analysis of Comments and Changes* section in this document.

*Public Comment:* In response to our invitation in the NPP, 100 parties submitted comments on the proposed priorities and definitions.

Generally, we do not address technical and other minor changes, or suggested changes that the law does not authorize us to make under applicable statutory authority. In addition, we do not address general comments regarding concerns not directly related to the proposed priorities or definitions.

*Analysis of Comments and Changes:* An analysis of the comments and of any

changes in the priorities and definitions since publication of the NPP follows.

**General Comments**

*Comments:* Many commenters expressed general support for all the proposed priorities, and one commenter also expressed support for the definitions. We also recognize that it is important to engage broad stakeholders and have incorporated many of the comments throughout the priorities.

Some of these commenters also expressed support in specific areas. For example, two commenters expressed appreciation for the emphasis on the needs of students and educators. A third commenter expressed similar support for the emphasis on the needs of students and added, more broadly, support for the focus on schools and families. Two commenters noted the importance of understanding the impact of the novel coronavirus disease 2019 (COVID–19), with one adding that it is critical to prioritize actions that will increase educational equity and create a more diverse education workforce. Other commenters supported the emphasis the priorities place on specific topic areas relating to, or subgroups of, children. For example, two commenters noted the emphasis these priorities have on students with disabilities. Another commenter noted, along with their support, that they thought it was important to focus Department grant programs on first-generation students from low-income backgrounds. A separate commenter supported the overall emphasis throughout the priorities on early learning, while another commenter expressed overall support for the focus on mental health. Another commenter expressed appreciation for the acknowledgement of the need to address staffing shortages and the use of universal design for learning. This same commenter specifically noted that students with disabilities, particularly students with Down syndrome, will only benefit from each of these priorities if grantees include such students. The commenter further indicated that students with significant cognitive disabilities have been frequently left out of key grant programs.

Other commenters believed that the priorities could have a positive impact on education more broadly. For example, one commenter stated that these priorities are crucial to the immediate and ongoing work of recovery and transformation in our education system to meet the needs of all learners, while another commenter appreciated the thoughtful systems-level approach to equitably distribute

resources. Finally, one commenter expressed hope that the priorities bring noticeable change in education.

*Discussion:* We appreciate the overwhelming support for the priorities and welcome the additional comments and suggestions. We agree with the commenters on the importance of focusing on the critical needs of educators, schools, families, and students, including students with disabilities, including those with significant cognitive disabilities.

*Changes:* None.

*Comments:* One commenter requested changes to the background section of the NPP where the Department discussed its intent that, where technology is referenced in the priorities and definition, the technology be accessible to English learners, and to individuals with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, as applicable. The commenter asked that we also specify that limited English proficient parents should have meaningful access to information about technology, including technology support and information on data collection, storage, and sharing. The commenter also requested that instructional technology be developed with English learners in mind and that teachers know how to select appropriate and high-quality digital tools that can be adapted for English learner instructional strategies in a virtual environment. For example, instructional technology could include embedded language support features and allow for verbal peer-to-peer interaction.

*Discussion:* We appreciate the recommendation for changes to the background to include supports for limited English proficient parents and to ensure that instructional technology is developed with English learners in mind. We agree that Priority 1(e) should address this concern as technology supported learning experienced must be inclusive of English learners. We do not include a background section in the NFP, nor is the background section considered part of the final priorities.

*Changes:* In priority 1(e), we have included language to specify that access to high-quality, technology supported learning experiences be accessible and usable by English learners.

*Comments:* One commenter recommended that we require grantees to report on their progress in amplifying the voices and experiences of families, providers, and community partners. In addition, the commenter recommended requiring grantees to disaggregate data to the extent possible by race/ethnicity, language, and disability status.

*Discussion:* We appreciate the comment. Reporting requirements for grant programs are established separately for each grant program based on program requirements. The Secretary's supplemental priorities are not, by design, the place for establishing reporting requirements. For this reason, we are not making any changes in response to this comment.

*Changes:* None.

*Comments:* One commenter suggested using the term "early learning and education" instead of "education" throughout the priorities to emphasize the birth through college model. The commenter also suggested using "children and students" instead of "students," and "Pre-K starting at birth" instead of "K-12."

*Discussion:* We agree with the commenter's interest in ensuring that the priorities are inclusive of young learners. We interpret the terms "education" and "students" throughout the priorities to be, in general, inclusive of early learning and children, respectively. Where appropriate, we have specified specific groups of students. Further, "early learning" is defined to include programs that provide early care and education for children from birth to kindergarten entry. Therefore, we decline to make any changes in response to this comment.

*Changes:* None.

*Comments:* One commenter stated that prioritizing vulnerable students in underserved school districts should be a top priority for the Department.

*Discussion:* We agree that prioritizing vulnerable students in underserved school districts is important. The establishment of these priorities is one of many actions the Department is taking to focus on vulnerable students in underserved school districts. The priorities repeatedly reference "underserved students," and the definition of "underserved students" includes students who may be vulnerable for a variety of reasons.

*Changes:* None.

*Comments:* One commenter recommended adding career and technical education centers to the listings of educational settings as these centers are often not included in funding conversations.

*Discussion:* We thank the commenter for this suggestion and agree that a focus on career and technical education centers should be added to specific priorities to ensure that they are intentionally included in the discussion.

*Changes:* We have added "career and technical education programs" to

subpart (a) of Priority 2, subpart (h)(1)(ii) of Priority 3, and subpart (f) of Priority 4.

*Comments:* Several commenters suggested adding additional priorities. One commenter suggested a priority focused on improving the effectiveness of principals. Another commenter suggested a science, technology, engineering, and math (STEM) priority. A third commenter proposed a priority to address other factors that impact educational attainment and outcomes, through a whole-child approach to young children's success. A fourth commenter recommended making school diversity its own priority. That commenter also suggested using more explicit language on "school integration" and "desegregation" throughout the priorities, in addition to the U.S. Supreme Court's terminology—"school diversity" and "reduction of racial isolation."

*Discussion:* We appreciate these thoughtful recommendations for additional priorities. The priorities, as proposed, address each of these topics. Priority 2 focuses on STEM by including a subpart that calls attention to the inequities related to access to and success in rigorous and engaging approaches to STEM coursework. In addition, the Department has funded and continues to fund many projects with a STEM focus.

Regarding a new priority to address other factors that impact educational attainment and outcomes, projects that focus on whole-child strategies would be included under both Priority 1 and Priority 4. Priority 1 supports projects that address the impacts of COVID-19 by providing resources and supports to meet the basic health and safety needs of students and educators. Priority 4 is for projects designed specifically to improve students' social, emotional, academic, and career development.

Finally, school diversity is addressed specifically in Priority 2. Overall, the Department is committed to equity and adequacy of resources for underserved students. One way we think this can be accomplished is by examining the sources of inequities. For this reason, proposed subpart (b)(13) of Priority 2 supports developing or implementing specific policies or practices to address racial and socioeconomic diversity by improving data collection methods to identify trends in and contributors to stratification and barriers to diversity.

Given that each of the additional proposed topics are addressed in the existing priorities, including improving the effectiveness of principals and the use of school integration and



desegregation, we are not making any changes in response to these comments.

*Changes:* None.

*Comments:* Several commenters made suggestions regarding the use of the term “educator.” These commenters highlighted the lack of clarity on who the term includes, with many concerned it might be construed to mean only teachers, pointing out inconsistencies in how the term was used in the proposed priorities. For example, if “educators” is meant to include persons who are not teachers, then the commenters argued that subpart (f)(3) of Priority 3, which uses the phrase “educator and school leader,” is confusing. As such, many commenters recommended including principals and other school leaders in addition to educators to highlight the important role school leaders play and noted that this would be consistent with the Elementary and Secondary Education Act (ESEA). Additionally, other commenters recommended including early learning educators among the educators addressed in Priority 3, also citing consistency with the ESEA. One commenter requested that specialized instructional support personnel be included, and another commenter noted the importance of school psychologists. Lastly, a couple of commenters requested that when discussing diverse educators, Priority 3 specifically mention educators with disabilities, emphasizing the importance of students with disabilities seeing successful educators with disabilities and the abilities of those diverse educators.

*Discussion:* We appreciate that the use of “educator” could cause confusion regarding who is included under this term. Our use of “educator” is meant to include all professionals working to educate students and impact student learning, recognizing that all these professionals play important roles. Additionally, the term “diverse educators” is intended to include educators from all backgrounds that are underrepresented in the workforce, including educators with disabilities. As such, we are adding a definition of “educator” to explain more clearly what is meant by the term and to be inclusive of the groups that commenters noted, and we are clarifying usage of “educator” throughout the priorities where it is unclear.

*Changes:* We have added a definition of “educator,” which includes early childhood educators, teachers, principals and other school leaders, specialized instructional support personnel (e.g., school psychologists, counselors, school social workers), paraprofessionals, and faculty.

Additionally, in Priority 2, subpart (a)(2),(b)(2)–(4), and throughout Priority 3, subpart (b), we have replaced the references to “teachers” with references to “educators” for consistency. In proposed subpart (f)(3) of Priority 3, we have removed “and school leaders.”

Although the Department did not propose definitions of “teacher” and “principal” in the NPP, we have revised the final definitions, based on this and other comments, to include a definition of “educator.” While it was always our intent to include early learning professionals within the broader group of educators, we have added a definition of “educator” to the final definitions that includes “early learning educator.”

*Changes:* We have added “early learning educator” to the new definition of “educator.”

*Comments:* One commenter suggested the Department define Pre-K students as a separate subgroup with specific needs outside of K–12 education. More specifically, the commenter suggested that we clarify that each of the final priorities would support projects in the early learning context, to the extent applicable.

*Discussion:* We appreciate this comment and agree with it, in part, as we agree with supporting projects that address early learning but do not think we need a separate subgroup definition. Priorities 2, 3, 4, and 6 share a focus on underserved students and the definition of “underserved student” includes children in early learning environments as one of the groups of learners upon which a project may focus.

*Changes:* We are revising the introductory paragraph within priorities 2, 3, 4, and 6 to include that the focus of the projects should include underserved students.

*Comments:* One commenter asked that, through the priorities, we specifically promote certificate programs, such as programs that award licensed practical nursing or cybersecurity certificates, which could benefit students with disabilities who have individualized educational programs.

*Discussion:* We thank the commenter for the comment. We agree that certificate programs can provide important career pathways to students, including students with disabilities. Priority 5 addresses the types of programs described by the commenter and encourages projects designed to increase postsecondary access, affordability, success, and completion for underserved students, which may include under subpart (j) projects that connect children or students with disabilities, adults with disabilities, and

disconnected youth to resources designed to improve independent living and the achievement of employment outcomes. Accordingly, no change is needed, as Priority 5 would allow the projects proposed by the commenter.

*Changes:* None.

*Comments:* One commenter urged the Department to include student and educator voices in each of the topic areas to engage students in the overall education process.

*Discussion:* We agree that students and educators, as applicable, should be included in the design, development, and implementation of projects proposed under these priorities. However, where appropriate to the program and the competition, the Department may include in the NIA the selection criteria in 34 CFR 75.210, through which a proposed project will be evaluated on the extent to which the proposed project encourages participant or beneficiary involvement and to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. We think this approach is a more tailored way to promote involvement by the relevant affected stakeholders, which may include students and educators, on a program-by-program basis. Therefore, we have not made any changes in response to this comment.

*Changes:* None.

*Comments:* Five commenters suggested revising the introductory note about accessibility of technology to ensure it references all applicable Federal law, including the Individuals with Disabilities Education Act (IDEA) and the ESEA. The commenters also suggested adding language to reinforce the need for technology to be universally designed and fully accessible, as well as to be interoperable with assistive technology. A sixth commenter stated that the technology should be usable by English learners and individuals with disabilities.

*Discussion:* We appreciate the recommendation for changes to the background to ensure it is consistent with all Federal requirements and for the suggested improvements. We do not include a background section in the NFP, nor is the background section considered part of the final priorities. Therefore, we are not making any changes in response to these comments.

*Changes:* None.

*Comments:* Two commenters suggested addressing rural education in the priorities. One urged caution in adding supplemental priorities to rural-serving programs without funding

increases; the other recommended maintaining the priority related to rural applicants in the Administrative Priorities for Discretionary Grant Programs published in the **Federal Register** on March 9, 2020 (85 FR 13640) and requested that additional attention be given to rural education under each supplemental priority. These commenters also provided suggestions related to funding for rural education. One recommended providing additional funding to address the needs of rural education, particularly educator compensation and training; the other commenter requested the Department work to ensure that all districts have equal opportunities to apply for and receive funding and noted concerns that some school districts do not apply for discretionary grants because they believe the Department favors the largest school districts.

*Discussion:* We thank the commenters for their suggestions. In preparing for each program's grant competition, the Department takes care in deciding which priorities to apply and when, considering, in part, eligible entities' capacity for addressing the priorities. Nevertheless, we appreciate the commenter's caution about the use of supplemental priorities for rural-serving programs. Regarding the administrative priority for rural applicants (85 FR 13640), this priority remains in effect and will be available for use by the Department, as appropriate.

Regarding the comment about additional funding for rural education, we consider these priorities to be one mechanism for generating additional funds for rural-serving programs. Rural-serving programs may apply for the Department's discretionary grants to which these priorities will apply. Finally, while the comment about ensuring that all districts have equal opportunities to apply for and receive funding is beyond the scope of the supplemental priorities, the Department's procedures for awarding discretionary grants include a variety of safeguards and technical assistance to ensure fair grant competitions. For example, for almost all the Department's grant competitions, program staff recruit application reviewers from outside the Federal Government. And, while Department staff screen applications to ensure that they meet all program requirements, the non-Federal reviewers read and independently score the applications assigned to them.

*Changes:* None.

### **Priority 1—Addressing the Impact of COVID-19 on Students, Educators, and Faculty**

*Comments:* Several commenters expressed their support for Priority 1, its focus on the effects of the COVID-19 pandemic, and recognition of the challenges underserved students experienced before the pandemic. Commenters especially appreciated the focus on students' social, emotional, mental health, and academic needs; technology access for students and educators and how to best address the "digital divide"; using an evidence base; and the background discussion of the priority that emphasized afterschool and summer programs, focus on the whole child, and community and family engagement. One commenter appreciated the alignment of this priority with the needs of community colleges. In its support for the priority, one commenter recommended prioritizing underserved students, while another commenter expressed that they would like to see a focus on all age groups from infants to young adults, as well as educators and families. Another commenter recommended prioritizing Historically Black Colleges and Universities (HBCUs) to provide resources for HBCUs to address the needs of their students.

*Discussion:* We appreciate the support for the priority and that commenters found strong connections between the priority and the needs they are seeing in the field. Regarding prioritizing underserved students, Priority 1 focused on "the students most impacted by the pandemic," but we believe that, as we did in the other priorities, we should include a focus on underserved students. We also define "underserved students" to include age groups from infants to young adults, and the educators and families that support those students. We also agree that it is important that all institutions, especially institutions that work directly with underserved students, have the resources needed to address Priority 1 to address the needs of and fully support their students who are largely underserved populations impacted by the pandemic.

*Changes:* We have added "with a focus on underserved students" to the lead-in paragraph of Priority 1. Additionally, to address this comment, in Priority 2, we have added new subpart (b) that allows the Department to prioritize community colleges, HBCUs, Tribal Colleges and Universities (TCUs), or Minority-Serving Institutions (MSIs). Accordingly, proposed subpart

(b) of Priority 2 has been redesignated as final subpart (a)(2).

*Comments:* A couple of commenters proposed that Priority 1 be used as a competitive preference priority, with one commenter recommending that this priority be used as a competitive preference priority in the FY 2022 Charter School Programs (CSP) competitions.

*Discussion:* These priorities are intended to be a menu of options for use in our discretionary grant programs. The Department may choose which, if any, of the priorities or subparts are appropriate for a particular program competition, as well as the appropriate level of funding and selection criteria. If the Department chooses to use a supplemental priority, it also will designate in the notice inviting applications whether the priority will be used as an absolute, competitive preference, or invitational priority in the grant competition.

*Changes:* None.

*Comments:* One commenter recommended the addition of a new subpart to Priority 1 focused on comprehensive plans to address literacy gaps from the pandemic and remote learning.

*Discussion:* We agree that the pandemic has had significant impacts on learning, including on literacy development. Although we appreciate the commenter's recommendations for how this priority could be expanded to include a focus on literacy, we want to clarify that the priority does not prohibit the projects described by the commenter, and that there are already elements that support such models, for example subpart 1(g). Applicants have the discretion to determine what approach or intervention will best address the priority and meet the needs of the targeted population.

*Changes:* None.

*Comments:* Several commenters encouraged applicants to consider the views of students in addressing the issues under the priority, especially focusing on student engagement in decision-making and community asset-mapping. Another commenter suggested strengthening the priority by including family impacts from the pandemic, not just student- and educator-specific impacts, including opportunities to address the needs of families in addition to needs of students' and educators.

*Discussion:* We agree that it is important to be able to reengage and support student learning to address COVID-19 impacts, and that students and educators, as applicable should be included in the design, development and implementation of projects

proposed under these priorities. Student engagement and voice can be a part of projects addressing this priority as proposed, and we believe that applicants are best suited to determine how to engage students to address the priority. Likewise, we recognize that the pandemic has had an impact on everyone, not only students and educators, but their families as well. We believe that addressing students' needs can include addressing the needs of the families that support those students but agree with the commenter's recommendation that the priority should explicitly refer to reengaging families.

*Changes:* We have added "and their families" at the end of subpart (a) of Priority 1.

*Comments:* Though Priority 1 is focused on addressing the impacts of COVID-19, one commenter encouraged the Department not to use this priority to support "vouchers," citing the Education Stabilization Fund-Rethink K12 Education Models, which established microgrants for parents. The commenter noted the importance of this priority focusing on public school students.

*Discussion:* We recognize that across the various COVID-19 relief programs established by Congress, there have been different requirements, priorities, and eligible applicants. This priority is designed to address the students most impacted by the pandemic, with a focus on underserved students. The priority does not include any reference to "vouchers"; eligibility for a program, including whom a program may serve, is determined by a program's statutory authority.

*Changes:* None.

*Comments:* Several commenters recommended that Priority 1 specifically address the needs of early learning programs, and recommended changes to the background section to reference these needs and the mental health needs of children in early learning programs related to the pandemic.

*Discussion:* We appreciate the recommendation for additions to the background for the priority to discuss early learning. We do not include background sections for priorities in the NFP, nor are the background sections considered part of the final priorities. Therefore, we are not making any changes in response to this comment. Regarding focusing on the mental health needs for children in early learning, since the proposed priority refers to "underserved students," and the definition of "underserved students" includes "children in early learning

environments," the proposed priority's focus on students' mental health needs includes students in early learning programs. Accordingly, changes to the priority are not necessary.

*Changes:* None.

*Comments:* Multiple commenters supported subpart (a) of Priority 1, especially the emphasis on community asset-mapping, with one commenter recommending using U.S. Census data to look more specifically at household disparities from the pandemic. Additionally, commenters noted that this priority will help supplement the other funding States are receiving and will help minimize burden on educators, students, and families. While supportive of the priority, a few commenters recommended additions to this subpart. One commenter noted the significant impacts of the pandemic on English learners and requested that this subpart address learning and language needs of these students. This commenter also recommended a focus on reengaging "virtual drop-out" students who disengaged because of remote learning. Other commenters recommended that we add language to the priority to ensure that State and district needs are assessed and measured, looking not only at academic indicators but also at student well-being, school culture, and broader indicators of reengagement, with one commenter suggesting a focus on reengagement at the early learning level. Given the varying impacts of the pandemic on students, one commenter proposed additional language focused on assessing the needs of specific subgroups of students, including children or students with disabilities, and the potential extension of eligibility for services for students with disabilities based on this assessment of needs.

Finally, one commenter recommended that while full community engagement in community asset-mapping and the data generated are important, the asset-mapping does not need to be perfect and that funding under the priority be used to serve as many students as possible.

*Discussion:* We appreciate the comments supporting this subpart and the importance of community asset-mapping. We agree that there are a range of data points that can be used to assess needs, including U.S. Census data, State and local data, and data from community partners. We also agree that reengagement of all groups of students is important, including students attending school in-person and those participating in remote learning. The priority is focused on the students most impacted by the pandemic, and we agree that these include English learners

and children or students with disabilities as discussed by commenters. Given the focus on students most affected by the pandemic, we do not think additional language identifying specific groups of students is necessary, but we agree that ensuring that the assessment considers subgroups of students is valuable. As a result, we have added language to clarify that the assessment may include an assessment of subgroups of students. We agree that States and districts need to work with students with disabilities and their families but do not think additional language in the priority is necessary for this work to be carried out. Lastly, the intent of the subpart is to reengage students and address the impacts of COVID-19, and applicants have the discretion to determine what approach or intervention will best address the priority and meet the needs of the targeted population.

*Changes:* We have clarified in subpart (a) of Priority 1 that any assessment of student disengagement may include a focus on subgroups of students.

*Comments:* Multiple commenters supported subpart (b) of Priority 1 and appreciated the focus on health and safety needs, especially the inclusion of educators along with students. One commenter recommended a focus on underserved communities, given the impact of the pandemic on those communities. Another commenter encouraged inter-agency collaboration to address health and safety needs, including collaboration with State departments of education, food and nutrition agencies, public health departments, and other providers.

*Discussion:* We appreciate the comments in support of subpart (b) and agree that health and safety needs of both students and educators need to continually be assessed and addressed. We also agree that collaboration with relevant agencies and providers can help to successfully provide for the health and safety needs of students and educators, and such collaboration would be permitted under this subpart.

This priority is focused on those most impacted by the pandemic, and as noted above, we have added "underserved students" to the lead-in paragraph of Priority 1 to focus on those groups. In addition, Priority 6 addresses inter-agency collaboration and could be used in conjunction with this priority, so we do not think any changes to the subpart are necessary.

*Changes:* None.

*Comments:* A few commenters expressed support for subpart (c) of Priority 1 and suggested that mental health be maintained in this subpart.

One commenter recommended that funding be used to address shortages in mental health professionals and that the subpart include language allowing the use of multi-tiered systems of supports to address the social and emotional needs of students. One commenter requested that the approaches to addressing these needs be culturally and linguistically responsive. Another commenter recommended a new subpart focused on community engagement and the importance of partnerships to support emotional, physical and mental health, and academic needs.

*Discussion:* We appreciate the commenters' support for this subpart of the priority and agree that addressing students' mental health needs is especially important given the impacts on mental health caused by the pandemic. Addressing mental health needs includes ensuring the appropriate mental health professionals are involved. We also recognize the potentially positive impacts of well-designed, well-executed multi-tiered systems of supports, which we include in Priority 4. Such an approach to addressing mental health needs would be permitted under this subpart, so we do not think additional language is necessary in this subpart of Priority 1. We recognize the importance of addressing students' needs in culturally and linguistically inclusive ways, recognizing and valuing all students' identities, cultures, and potential, and are adding language to address this issue similar to that used in other priorities. Lastly, we agree that community engagement and partnerships can be beneficial to addressing students' social, emotional, mental health, and academic needs. Applicants have the discretion to determine what approach or intervention, including necessary partnerships, will best address the priority and meet the needs of the targeted population. In addition, Priority 6 addresses inter-agency collaboration and could be used in conjunction with this priority.

*Changes:* We have specified in subpart (c) of Priority 1 that project approaches must be inclusive with regard to race, ethnicity, culture, language, and disability status.

*Comments:* Multiple commenters supported subpart (d) of Priority 1. One commenter recommended that this subpart emphasize the recruitment and retention of educators and educator preparation programs. Another commenter recommended that the subpart reference a specific report on

teachers of color and include a focus on educators and staff of color.

*Discussion:* We appreciate support for this subpart. We do not think the suggested additions to subpart (d) are necessary because Priority 3—Supporting a Diverse Educator Workforce and Professional Growth to Strengthen Student Learning—focuses on educator preparation, recruitment, and retention, as well as educator diversity and the needs of diverse educators. Applicants have the discretion to determine what approach or intervention will best address the priority and meet the needs of the targeted population, which may include specific groups of educators most impacted by COVID-19. Lastly, we do not cite specific reports in the text of the priorities and therefore decline to include the suggested references.

*Changes:* None.

*Comments:* Multiple commenters noted their appreciation for subpart (e) of Priority 1 and the Department's recognition that those most impacted by the pandemic often have significant technology needs. Several commenters made recommendations for additional language related to technology for children or students with disabilities to ensure the technology complies with laws, such as the Children's Online Privacy Protection Act (COPPA), and is "accessible," "useable," and "interoperable." One commenter requested that district and school administrators ensure that any future technology schools and districts obtain is accessible for children or students with disabilities. Commenters recommended that English learners also be addressed in this subpart, noting that English learners similarly have unique needs. One commenter recommended that this subpart also ensure that families understand the technology being used. A couple of commenters suggested that the subpart require that the professional development educators receive is "collaborative" and "sustained," and another commenter recommended that coaching be included along with professional development. Another commenter requested changes to the background section of the NPP where the Department discussed its intent that, where technology is referenced in the priorities and definition, the technology be accessible to English learners and to individuals with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, as applicable. Lastly, one commenter suggested that the subpart include language regarding the continued use of

remote learning and service delivery, especially in the case of school psychologists.

*Discussion:* We agree with commenters that technology access continues to be a barrier for many students, and we share commenters' concern about accessibility for all students, including children or students with disabilities and English learners. To address this issue, we have added language to this subpart to ensure that technology meets the accessibility needs of children or students with disabilities, and to also clarify that technology must support English learners. We do not think it is necessary to add language regarding future technology purchases by districts and schools because the subpart already requires that technology be accessible. Regarding professional development, we agree that professional development may benefit from being collaborative and sustained; however, the degree to which it need to be collaborative and sustained may depend on the type of technology and the educator's level of comfort and experience. As to maintaining remote learning and service delivery, applicants have the discretion to determine what approach or intervention will best address the priority and meet the needs of the targeted population.

*Changes:* We have revised subpart (e) of Priority 1 to provide that technology-supported learning experiences must be useable and interoperable after in addition to accessible by children or students with disabilities, as well as English learners. We have also provided that related professional development should be sustained and collaborative, as appropriate.

*Comments:* One commenter suggested including universal design for learning in subpart (f) of Priority 1 as an example of an evidence-based intervention.

*Discussion:* We thank the commenter for the suggestion and agree that universal design for learning is an example of an evidence-based intervention. We do not believe that it needs to be specifically mentioned in this subpart for a prospective applicant to propose to use it and note that it is already included in the definitions.

*Changes:* None.

*Comments:* One commenter suggested decoupling personalized learning from extended learning time and technology as both can enhance learning, however, personalized learning is not dependent on extended learning time or technology. The commenter stated that applicants should enable evidence-based interventions, by leveraging technology where appropriate, to support personalized in-person student

learning as well as evidence-based supplemental activities and, where possible, to increase parent and community engagement.

*Discussion:* We want the current language of the subpart to allow for personalized learning and extended learning time and technology, however, would agree that there are also other evidence-based interventions that could be used by potential grantees. We decline to make further changes to the language.

*Changes:* None.

*Comments:* One commenter noted that Priority 1 does not clearly include afterschool and summer learning options, and suggested splitting subpart (f) of Priority 1 into two subparts to highlight the importance of afterschool and summer learning programs. Specifically, the commenter proposed that subpart (f) refer to the use of technology to enable evidence-based interventions to support personalized in-person student learning; and that we create a new subpart (g) focused on evidence-based supplemental activities that extend learning time and increase student engagement and, where possible, parent engagement. The commenter also recommended that the proposed subpart (g) contain examples of activities that extend learning time, such as comprehensive afterschool and summer programs and work with community partners.

*Discussion:* We appreciate the commenter's suggestion and agree that afterschool and summer learning programs are important and should be explicitly mentioned. We have not adopted the commenter's suggestion to split subpart (f) into two subparts but modified the current subpart (f) to include comprehensive afterschool and summer learning and enrichment programs as examples of supplemental activities.

*Changes:* We have added in subpart (f) of Priority 1 comprehensive afterschool and summer learning and enrichment programs as examples of supplemental activities that extend learning time and increase student and parent engagement.

*Comments:* One commenter suggested that the Department consider leveraging technology for strategies beyond traditional curriculum and instruction, to include work-based learning opportunities. The commenter noted that such strategies could expand opportunities for work-based learning and employer engagement, while ensuring equitable access to students of diverse backgrounds.

*Discussion:* The requirement to use evidence-based supplemental activities

do not preclude an applicant from proposing to use innovative strategies for work-based learning. Accordingly, we do not believe that changes are needed to subpart (f) to allow the activities proposed by the commenter. Other priorities reference career and technical education and work-based learning, and could be used in combination with this priority.

*Changes:* None.

*Comments:* One commenter suggested removing "where possible" from subpart (f) of Priority 1. The commenter advised that family engagement should be a top priority and made possible through all means. The commenter asked that we require that parents have access to devices, connectivity, and training in the use of the school's technology.

*Discussion:* We appreciate the comment and agree that family engagement is a top priority. We included "parent engagement" in this priority to signal its importance, however, we realize that there may be limited instances where parental engagement may not be necessary and have included the "where appropriate" in recognition of those instances. Additionally, we will not include the requirement for access to devices as this may create additional burden for school systems who are at a minimum trying to ensure that their students all have access.

*Changes:* None.

*Comments:* One commenter requested that we use subpart (g) of Priority 1 to encourage States and districts to develop strategies related to accelerated learning, but another commenter expressed concerns about a lack of information on the effectiveness of certain accelerated learning approaches, especially for children or students with disabilities, and how retention and special education eligibility are being used in relation to lost instructional time. One commenter suggested that we add language related to professional development for educators to address lost instructional time. Another commenter recommended adding language related to career development and readiness.

*Discussion:* We recognize that there are many different instructional approaches and supports to accelerate learning, and this priority is designed to support a variety of approaches to meet the needs of those most impacted by the pandemic, including children or students with disabilities. We carefully consider when and how to use any of the supplemental priorities, and in instances where we may use this priority and subpart (g), applicants will

have the discretion to determine what approach or intervention will best address the priority and meet the needs of the targeted population. We agree that professional development is an important component in successful use of instructional approaches and supports to accelerate learning and think that support warrants adding language to the subpart. Lastly, given that this subpart is focused on accelerating learning, we do not think it necessary to add language related to career readiness.

*Changes:* We have added professional development, coaching, and ongoing support for educators as examples of approaches and supports under subpart (g) of Priority 1.

*Comments:* Multiple commenters proposed changes to subpart (h) of Priority 1 to expressly allow for a focus on children or students with disabilities, other credit-bearing courses not specifically addressed, and adult learners. A couple of commenters recommended including non-credit-bearing coursework for comprehensive transition programs for children or students with disabilities. Another commenter recommended that dual enrollment and early college programs be referenced in the subpart. Regarding adult learning, one commenter recommended adding a reference to advancing the careers and skills for adults, and another suggested the addition of a reference to adult learning after postsecondary education.

*Discussion:* We appreciate the comments on subpart (h) of Priority 1, as commenters seek to ensure all individuals are reflected in a discussion of postsecondary education or training programs. This priority is focused on supporting all students in earning a recognized postsecondary credential, prioritizing credit-bearing coursework, therefore we decline to include the addition of non-credit bearing coursework. We strongly support and encourage dual enrollment and early college programs and because such programs would be permitted under the subpart, we do not think it is necessary to add a specific reference to these programs. As to adult learners, we recognize the importance of lifelong learners and agree that proposed projects supporting these types of programs or approaches would be permitted under this subpart, and no further revisions are necessary. We are adding express reference to such programs in this subpart to underscore our interest in promoting their use.

*Changes:* None.

**Priority 2—Promoting Equity in Student Access to Educational Resources, Opportunities, and Welcoming Environments**

*Comments:* Several commenters expressed their general support for Priority 2 and made additional comments. One commenter specifically noted the commitment to equity and strong education regardless of background expressed through the priority, as well as the importance of equitable access to meaningful summer learning opportunities. Some commenters, while expressing their support, also urged the Department to maintain its focus on student-centered and project-based learning and stated that deeply engaging families is essential to help ensure equitable access to resources. Another commenter appreciated the inclusion of out-of-school-time settings as one of the eight educational settings listed in the priority. Several commenters appreciated the focus on parent engagement. Another commenter supported continuing existing efforts to designate resources for evidence-based, school-wide policies and practices that reduce bullying and harassment of and, discrimination against, all students. Another commenter supported new measures of student discipline to ensure more equity and end the school-to-prison pipeline. An additional commenter noted the value of project-based learning for improving academic outcomes and the importance of teacher development that includes demonstration and rehearsal activities for ensuring equitable participation in classrooms. One commenter requested that the Department increase the frequency of the Civil Rights Data Collection (CRDC) to ensure equity. A commenter agreed that equitable, systemic, and strategic early college credit is essential to driving student success in secondary and postsecondary education and beyond. Multiple commenters expressed support for all subparts of the priority. Several commenters expressed strong support for subpart (b) with specific support for the focus on identifying and remedying inequities in educational opportunities and toward making educational opportunities equal, equitable, and accessible. Another commenter stated that subpart (b) will help to increase equity by ensuring more students have access to well-prepared, effective, and diverse educators. Another commenter expressed support for equity in student access to educational resources. One commenter fully supported the Department's prioritization of

community and family engagement while designing and administering discretionary grant programs. A final commenter expressed support for success in critical and high-need fields to address the systemic practices that have contributed to inequities.

*Discussion:* We appreciate all the commenters' support for Priority 2. We think that, overall, the priority allows flexibility for applicants to propose evidence-based, capacity-building, and systems-level approaches designed to effect long-term change systemically and systematically for Department stakeholders. Although it is beyond the scope of this priority, we also appreciate the commenter's recommendation for enhancing the CRDC and agree that the CRDC is one resource available to identify inequity. Although it is beyond the scope of these priorities, we also recognize that the CRDC includes multiple data points that are currently collected that also capture gaps in educational equity.

*Changes:* None.

*Comments:* Multiple commenters made recommendations related to the use of Priority 2, generally. Two commenters proposed that we use this priority as a competitive preference priority and recommended its use in specific grant programs such as Education Innovation and Research, Full-Service Community Schools, and CSP Developer. Another commenter stated that recipients of discretionary grants should be prioritized by demonstrated need, with another providing suggestions on how projects should be funded. One commenter suggested establishing structures to increase student engagement and voice, including student board members and youth-led town halls. The commenter also suggested partnerships with youth to deliver leadership training. The commenter suggested designing processes to ensure equity in access for marginalized students and lastly, the commenter also suggested individualized curriculum delivery and resources to support the self-actualization of students, as well as training educators to utilize restorative justice practices.

*Discussion:* These priorities, as well as their subparts, are intended to be a menu of options for the Department to use in competitions for discretionary grant programs. The Department may choose which, if any, of the priorities or subparts are appropriate for a particular program competition, as well as the appropriate level of funding and selection criteria. If the Department chooses to use a supplemental priority, it also will decide whether the priority

will be used as an absolute, competitive preference, or invitational priority in the grant competition.

We agree that the commenter's proposed tools, such as student-led engagement and partnerships and professional development, could help address inequities and establish, expand, and improve learning environments. The priority is designed to allow for a wide range of projects to advance educational equity and does not prohibit projects that incorporate these approaches. Therefore, we do not think it is necessary to include these specific examples.

*Changes:* None.

*Comments:* Regarding Priority 2 generally, one commenter cited retention of principals in schools with high rates of poverty, as well as the lower income and less autonomy in decision-making principals may have, as an issue and proposed adding school leaders to some of the subparts to clarify who is included in the meaning of the term "educator." One commenter suggested that we clarify that the priority supports high-quality, non-traditional programs that include both accelerated pre-service training and classroom-based clinical training and support, particularly those programs with a track record of success. The commenter disagreed with using the word "fully" to modify "certified educators"; the commenter argued that effective teachers are best identified by their performance in the classroom, not by their background or experience. Another commenter recommended acknowledging suspension and expulsion starting at the preschool years and the inequities in these practices in the background section of this priority and citing preschool school discipline data within the priority. The commenter noted the harmful implications such practices may have on students' well-being and longer-term school success. Another commenter asked that the priority require any State pre-kindergarten enrollment portals to include Head Start and Early Head Start as options, as well as assist with transportation, mental health, and professional development programs. They also suggested that the priority require States to set and meet enrollment targets by income, family status, dual language status, and other criteria with a strong relationship to kindergarten readiness. One commenter suggested the Department consider the resources needed to enhance community capacity to analyze and use data, including funding professional development and intermediary organizations. Another commenter

suggested the Department facilitate and support peer-to-peer learning models that generate sustainable, integrated work-based learning models for employers and students.

*Discussion:* We appreciate the information provided by the commenter about the challenges of retaining principals in schools with high rates of poverty. The definition of “educator” includes principals and other school leaders, so this priority also allows for projects that support principals.

We recognize and appreciate the commenter’s concern regarding the focus on fully certified educators in subpart (b). However, we think that all students, particularly underserved students, should have access to educators who are fully prepared on day one as is common practice in many high-performing nations, and who are not teaching, for example, on an emergency or substitute certification. Requiring teachers to meet State standards for full certification is one means of ensuring that all students have access to qualified educators. We agree that the focus on equity in the classroom should begin at the early learning stages. We specifically identify early learning programs as a setting that the Department may select under the priority. We have designed the priority to give applicants flexibility in promoting educational equity. We believe applicants could propose under the priority, without further revision, projects related to high-quality, non-traditional programs that include pre-service classroom-based clinical training and support; suspension and expulsion inequities in early learning settings; improvements to kindergarten readiness programs, including with respect to equitable access and accessibility generally; building capacity with respect to the analysis and use of data; and peer-to-peer work-based learning models. While we fully support Head Start and all avenues to kindergarten readiness, we are unable to make requirements that are not within the scope of the statutory authority for Department programs and therefore have not added the requested language to this priority. We appreciate the commenter’s suggestion on how funds should be used. These priorities are intended as a menu of options for use in our discretionary grant programs. The Department may choose which, if any, of the priorities or subparts are appropriate for a particular program competition, as well as the appropriate level of funding and selection criteria. If the Department chooses to use one of these priorities, it will decide whether the priority will be used as an absolute,

competitive preference, or invitational priority in the grant competition, as well as the appropriate level of funding and selection criteria.

*Changes:* None.

*Comments:* Multiple commenters recommended adding additional educational settings to the list in subpart (a) of Priority 2 that would refer to schools that serve the highest-need students in an effort to support schools enrolling significant populations of students who have previously dropped out or who have a history of trauma, mental health challenges, and severe disengagement; and (2) provide for developing, implementing, and expanding access to programs that provide two-generational support for the whole family, a support that emphasizes education, economic supports, social capital, and health and well-being to create a legacy of economic security that passes from one generation to the next. Additionally, one commenter suggested that we include “home and community” in the list of educational settings in subpart (a). Regarding subpart (a)(6), one commenter recommended a definition for out-of-school-time settings that would explicitly include all kinds of programs that occur during the summer, before and after school, in the evenings, and on weekends; located in school buildings or community settings; managed or operated by schools, community organizations, parks, camps, faith-based organizations and other entities; and serving children and youth in grades K–12. A couple of commenters suggested adding alternative schools and programs and college and career education to the list of educational settings.

*Discussion:* We appreciate the recommendation to expand the list to include additional educational settings to ensure that more support is provided, and we agree that a focus on these settings is appropriate. Support for serving the highest-need students is captured through the priority’s express focus on promoting educational equity and adequacy in resources and opportunity for “underserved students,” which is defined to include, as appropriate to the competition, several different subgroups of students who have high needs. We agree that home and community are important locations that encourage educational development. As we have included out-of-school-time settings in the list of educational settings under subpart (a)(6), which could include both the locations identified, we do not think it necessary to add additional language. We also do not think a definition for this term is needed, as we do not want

to limit the context in which out-of-school time settings, such as before- and afterschool programs on a school campus or specialty programs that include enrichment activities, may occur. Applicants have discretion to determine out-of-school locations to meet the needs of their intended beneficiaries. We agree that alternative schools and career and technical education centers may be beneficial to add to the identified list of education settings because of the emphasis these settings put on technical skills and employability as well as academic skills that benefit students by ensuring real world applicability. For this reason, we are expanding the list in subpart (a).

*Changes:* We have added alternative schools and programs and career and technical education programs to the list of educational settings in subpart (a).

*Comments:* One commenter urged the Department to add to subpart (b)(1) of Priority 2 an explicit focus on identification of children who are dual language learners. One commenter suggested that we include in subpart (b)(1)(i) a reference to engaging students in human-centered learning experiences. One commenter recommended that we include experiential civics learning so that students can receive exposure to civic engagement outside of the classroom. One commenter agreed with the importance of early college programs in subpart (b)(1)(iii) in preparing students for success and promoting equity. This commenter suggested the use of Federal matching grants to incentivize States to implement early college programs that target first-generation students of color. This commenter also suggested including civics courses that reflect content from social civic engagement.

*Discussion:* We appreciate the comments on this subpart, as the commenters seek to ensure all individuals are reflected in a discussion of equity. Subpart (b)(9), which specifically mentions improving learning environments for multilingual learners, addresses dual language learners, and we believe that adding additional language to the priority would be redundant. We agree that it is important to engage students thoroughly as well as utilize multiple tools to do so. Human-centered learning is one method that can be used, but it is not applicable in every learning environment or curriculum, nor is it an exhaustive approach to engagement. We believe that while it is not listed specifically within the subpart, an applicant would not be precluded from proposing a project that includes it. We also agree that real-world application in

all content areas is critical, and especially agree that there are benefits to an education that includes civic engagement. However, we do not believe a specific focus on such content is necessary, as applicants could address the preparation for a civic life, and thereby promote the quality of life in their community, in any number of ways; including such language may create an incorrect perception that the priority provides an exhaustive list of approaches.

We appreciate the commenter's acknowledgement of the importance of early college programs and the importance of ensuring that traditionally underserved students have access to higher education. Priority 2 supports projects designed to promote educational equity and adequacy in resources and opportunity for underserved students. "Underserved students" is defined to include, as appropriate, students of color and first-generation postsecondary education students. These priorities, and their subparts, are intended to be a menu of options for our discretionary grant programs. Accordingly, Priority 2 already allows the Department to include, as appropriate to a competition, a focus on improving access to early college programs for students of color and students who are the first in their families to attend a postsecondary institution.

*Changes:* None.

*Comments:* One commenter recommended including vocational rehabilitation in final subpart (a)(2)(xii) of Priority 2, along with education and workforce training programs. The commenter asked that we acknowledge in the priorities that a disproportionate percentage of youth in juvenile justice systems have disabilities and that they should receive access to all services to which they are entitled. Another commenter recommended that the Department require schools to consider what policies are needed or what policies should be removed to make it easier for students involved with the criminal justice system to access and succeed in these education or workforce programs. The commenter noted that, in higher education especially, there are still many policies that inhibit students with criminal records from being admitted into postsecondary education and accessing financial aid and housing and that greater educational equity means removing these barriers.

*Discussion:* We appreciate the recommendation to include vocational rehabilitation and agree that there are equity issues for children or students with disabilities in juvenile justice

facilities. We agree with the importance of removing barriers to support equity for students involved with the criminal justice system; however, this priority broadly addresses the educational settings for inclusion of these students as opposed to the specific methods which may vary by program.

*Changes:* Vocational rehabilitation has been added within final subpart (a)(2)(xii).

*Comments:* One commenter recommended that the Department consider how college and career pathways and work-based learning can be included in subpart (b)(1)(i) of Priority 2 as one of several student-centered approaches that develops skills and knowledge students need to succeed and encouraged the Department to support communities of practice, at the State and national levels, focused on innovative models for addressing systemic inequities.

*Discussion:* We appreciate the commenter's recommendation and note that there are several references within this priority and subpart to college and career pathways and work-based learning. For example, proposed subpart (b)(1)(v) (now final subpart (a)(2)(i)(E)) focuses on high-quality career and technical education courses, pathways, and industry-recognized credentials. We also appreciate supporting communities of practice and continually engage with internal and external entities to ensure that inequities are consistently addressed.

*Changes:* None.

*Comments:* One commenter recommended the Department consider how subpart (b) of Priority 2 can promote a broader focus on college and career pathways for all students and better align secondary-to-postsecondary pathways strategies. Another commenter expressed the urgent need for STEM curriculum in underserved communities. One commenter suggested that the Department include strategies such as transitional instruction in subpart (b)(1)(iii) to help reduce the need for developmental education at the postsecondary level. The commenter also suggested promoting the senior year of high school as an opportunity to accelerate student progress toward early college credit or college readiness through transitional instruction by, in part, incentivizing automatic acceleration and placement policies. One commenter suggested we include a focus on educator training in subpart (b)(1)(v) to ensure educators possess the pedagogical skills to serve the needs of all students. The commenter stressed the need for a more diverse educator workforce, especially more diverse

emergency-licensed teachers who possess bilingual skills, and the commenter believed they should be compensated like educators who receive stipends for special skills outside their regular duties.

*Discussion:* We appreciate the commenters' recommendations on subpart (b); subpart (b)(1)(v) was included for the purpose of ensuring a broader focus on college and career pathways. We agree that there is an identified need for STEM instruction in underserved communities; accordingly, in proposed subpart (b)(1)(vi) (now final (a)(2)(i)(F)) we provide for a focus on projects addressing the inequities in access to and success in rigorous and engaging approaches to STEM coursework. In addition, the Department previously funded and continues to fund many projects with a STEM focus. We agree that transitional instruction may help reduce the need for developmental education at the postsecondary level and note that proposed subpart (b)(1)(iii) (now final (a)(2)(i)(C)) has a focus on advanced courses and programs, including dual enrollment and early college programs; as a result, we believe that including additional language is unnecessary. We also agree that there should be a more diverse educator workforce and include that focus in proposed subpart (b)(2), which addresses educators from traditionally underrepresented backgrounds.

*Changes:* None.

*Comments:* One commenter recommended that in proposed subpart (b)(2) of Priority 2, the Department focus on non-novice educators, which are educators not in their first or second year of teaching, rather than inexperienced educators more broadly, and proposed additional language to ensure that schools serving underserved students do not have disproportionately high numbers of uncertified, out-of-field, and novice teachers. One commenter proposed clarifying that teachers must be fully certified, consistent with State law, in proposed subparts (b)(2) and (b)(4) to highlight that alternate pathways to certification may be offered under State law and often allow educators from underrepresented demographics to gain certification. The commenter articulated that this change would support fair and equitable treatment under Department competitions for schools subject to different requirements.

*Discussion:* We agree that there is a need to ensure that there is an equitable distribution of experienced educators and are adding the language suggested by the commenter to clarify the focus of



this subpart. We recognize that there are different State requirements for certification and different pathways into the profession. The requirements for certification are determined by the State, and, therefore, in each place where we refer to certification, we are referring to certification under State law regardless of pathway into the profession.

*Changes:* We have added language to proposed subpart (b)(2) to clarify that a project's objective under this subpart should be to ensure that underserved students are not taught at disproportionately higher rates by uncertified, out-of-field, and new teachers compared to their peers.

*Comments:* One commenter recommended revising proposed subpart (b)(4) of Priority 2 to emphasize the need to support and retain teachers in the field of special education given the recent declines in teachers entering and staying within this field.

*Discussion:* We agree that it is important to promote educational equity and adequacy in resources and opportunity in special education. Children or students with disabilities are an identified subgroup under the definition of "underserved student." Furthermore, subparts (b)(3) and (b)(4) reference high-need fields, which may include special education educators. Accordingly, projects to promote equity in special education would be permitted under these subparts.

*Changes:* None.

*Comments:* One commenter recommended adding the following specific programs to subpart (b)(5): Gender Spectrum's Gender-Inclusive Environment Training and Programming; National Association of School Psychologists' School Building Transgender and Gender Diverse Readiness Assessment; and the Family Acceptance Project's Training, Consultation and Program Development. Another commenter recommended that we include three specific programs in subpart (b)(5): Gay-Straight Alliance Clubs and Gender and Sexuality Alliances, LGBTQ-Specific Anti-Bullying Campaigns and Policies, and LGBTQ-Inclusive Sexual Education, citing the equity issues for lesbian, gay, bisexual, transgender, or queer (LGBTQ) students. Multiple commenters suggested adding "ability" as a category for pedagogical practices in subpart (b)(5) to ensure inclusion from the ability perspective. One commenter suggested modifying subpart (b)(5) to include projects that promote effective behavioral strategies and policies that create supportive school climates in the early learning years; partnering with

parents; and providing supports for educators such as mental health consultants and training and technical assistance that help in addressing implicit bias.

*Discussion:* We appreciate the commenters' identification of specific programs and agree that the work of each could be relevant to Priority 2; however, we do not endorse specific programs within our priorities and do not believe they need to be added because applicants have the discretion to determine what approach or intervention will best address the priority and meet the needs of the targeted population. More generally, we also agree that there are equity issues for lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) students and note that this priority subpart supports projects designed to promote educational equity and adequacy in resources and opportunity for underserved students. In the definition of "underserved students," LGBTQI+ students are already an identified subgroup.

We agree that inclusive pedagogy should also include children or students with disabilities and are adding "disability status" to the list of included pedagogy. We also appreciate the commenter's suggestion for modification of this subpart to include projects that promote effective behavioral strategies and parent engagement and providing supports for educators such as mental health consultants and training and technical assistance, and believe that these projects, are covered elsewhere in the priorities, such as in Priority 1.

*Changes:* We are including "disability status," in subpart (b)(5).

*Comments:* Two commenters suggested adding language to proposed subpart (b)(6) to specifically increase "independence" and "promote self-determination" in the use of technology to increase student engagement. Another commenter suggested separating proposed subpart (b)(6) into two subparts to emphasize the role out-of-school-time programs can play in supporting student engagement and equity. One commenter recommended adding parent advocacy and parent navigator roles in proposed subpart (b)(6). Another commenter recommended adding work-based learning to proposed subpart (b)(6) so that virtual work-based learning is an option, thereby helping States address the transportation barrier that impacts work-based learning. One commenter expressed support for the inclusion of proposed subpart (b)(6) and encouraged the Department to promote strategic

partnerships that foster innovation and allow schools to experiment with different learning models that leverage technology.

*Discussion:* We appreciate the comments. We believe that a focus on student independence and self-determination in the use of technology is permitted under the priority as written. Because the priority itself includes a focus on out-of-school time as an educational setting, and technology is highlighted in the priority as well, we believe there is already sufficient emphasis in proposed subpart (b)(6) (now final subpart (a)(2)(vi)) on the use of technology in out-of-school time activities. Further, we recognize the importance of parental involvement and believe that parent engagement under final subpart (a)(2)(vi) could include parent advocacy and navigation with the existing language.

We also agree that virtual work-based learning could help address barriers to work-based learning. We believe that projects that promote such learning could already be included within the existing language of student learning or supplemental activities, and thus it is not necessary to include as a standalone focus. Finally, we agree that partnerships provide opportunities to leverage resources to increase a project's effectiveness or its ability to reach more students and that such partnerships would be permitted without changes to the subpart.

*Changes:* None.

*Comments:* One commenter suggested we revise proposed subpart (b)(7) to focus on how funds are targeted and specifically to require funding levels to align with students' diverse needs and account for districts' differential access to local revenue given differences in local wealth and income levels.

*Discussion:* We appreciate the comment. We are clarifying in the subpart (now final subpart (a)(2)(vii)) that approaches to equitable school funding should focus on equitably meeting student needs and the district's capacity to fund K-12 schools.

*Changes:* We have added language to now final subpart (a)(2)(vii) indicating that approaches to equitable school funding should align funding levels to students' needs and account for districts' differential access to local revenue.

*Comments:* One commenter urged the Department to clarify in proposed subpart (b)(8) that access to high-quality early learning should be expanded for underserved populations through programs that are racially, ethnically, culturally, and linguistically responsive programs.

*Discussion:* We agree with the commenter that projects to expand early learning programs should be racially, ethnically, culturally, and linguistically responsive.

*Changes:* We have clarified in now final subpart (a)(2)(viii) that programs should be inclusive with regard to race, ethnicity, culture, language, and disability status.

*Comments:* One commenter recommended that in proposed subpart (b)(9) of Priority 2, instead of “multilanguage,” we use the term “multilingual,” which is used in the field.

*Discussion:* We share the commenters’ interest in using language consistent with that used by the field.

*Changes:* We have replaced “multilanguage” with “multilingual.”

*Comments:* One commenter suggested we also promote engagement of families under proposed subpart (b)(10) of Priority 2, noting that family engagement opportunities may not be accessible or relevant to those families facing the greatest barriers because they are developed without input from them. Additionally, this commenter suggested adding language specific to “parent leadership initiatives” to provide parents with the opportunities and tools they need to be advocates and impact change on education issues. Another commenter suggested modifying this subpart to include staff and families.

*Discussion:* We appreciate that there is a need for parents and families to be engaged in decision making and leadership and while we believe that they may be included among “underserved community members,” we agree that specifically including them would provide clarity. We have not added staff, as the appropriate staff are referenced in the prior subparts that refer to educators, which is a defined term that includes a range of school staff.

*Changes:* We have added a reference to “parents and families” in now final subpart (a)(2)(x).

*Comments:* One commenter recommended adding a reference to special education to proposed subpart (b)(11) of Priority 2, in recognition that a disproportionate percentage of youth in juvenile justice systems have disabilities and that they should receive access to all services to which they are entitled. Also, regarding subpart (b)(11), one commenter recommended the Department consider that non-credit programs can serve as a segue to college and career pathways for individuals exiting the justice system.

*Discussion:* We appreciate the recommendation to specifically focus on

students with disabilities in the juvenile justice system. We do not think this revision is needed due to the inclusion of juvenile justice settings as a targeted educational setting in proposed subpart (a) and the inclusion of students impacted by the justice system and students with disabilities in the definition of underserved students, from which the Department can select one or more of the student subgroups identified. Additionally, regarding non-credit programs, we considered this approach but have instead focused on supporting all students in earning a recognized postsecondary credential, and therefore prioritize credit-bearing coursework. As a result, we decline to include this language.

*Changes:* None.

*Comments:* A commenter requested that, in proposed subpart (b)(13)(ii) of Priority 2, we address within-school diversity and inclusion, such as efforts to end racialized tracking. Another commenter suggested that proposed subpart (b)(13)(ii)(A) require that the ongoing, robust family and community involvement include a diverse group of stakeholders. Another commenter wanted to create a separate priority with a focus of engaging family and community members in their child’s education. One commenter urged the Department to add “ethnic” diversity along with “racial” and “socioeconomic” to subpart (b)(13)(iv) and another commenter recommended adding “ability” to the same subpart. One commenter suggested putting special emphasis on the cross-agency collaboration listed in proposed subpart (b)(13)(ii)(C), specifically with the U.S. Department of Housing and Urban Development (HUD). One commenter recommended in proposed subpart (b)(13)(ii)(E) adding “or referring to charter schools in addition to magnet schools, citing research on the level of diversity in charter schools and the opportunity for charter schools to enroll students across geographic boundaries.”

*Discussion:* With respect to the request that we expressly promote within-school diversity and inclusion, we think that now final subpart (a)(2)(xiii)(B)(4) of Priority 2 addresses this through language related to an existing public diversity plan or diversity needs assessment. We agree that ethnic diversity and diversity of disability status are important and should be included in proposed subpart (b)(13)(iv), along with racial and socioeconomic diversity. We are modifying proposed subpart (b)(13)(iv) to include approaches that are inclusive with regard to race, ethnicity, culture, language, and disability status.

Regarding partnering specifically with HUD, we broadly address cross-agency partnerships in Priority 6 and therefore do not need to include that within this priority. With respect to charter schools, magnets were used as an exemplar and would not preclude an applicant being able to propose a project that addresses the same goals using charter schools.

*Changes:* We have added language that is inclusive with regard to race, ethnicity, culture, language, and disability status in now final subpart (a)(2)(xiii)(D).

*Comments:* A few commenters requested that the Department add a subpart (b)(14) to proposed Priority 2, to specifically improve the quality of education programs in Puerto Rico, to further the goal of promoting equity in access to educational resources and opportunities. One commenter recommended the addition of a subpart to prioritize the involvement of proximate voices in all levels of decision making to identify community needs.

*Discussion:* We appreciate the commenters’ desire to include language specific to Puerto Rico, and we agree that furthering the promotion of equity is important. We do not believe it is appropriate to target any particular State or territory as funding from the Department’s discretionary grant programs may generally be used within any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Outlying Areas, and the Tribal nations, and eligible applicants under our discretionary grant programs are generally established under a program’s statutory authority and, if applicable, regulations. Regarding the request to add a subpart prioritizing proximate involvement to help identify community needs, in proposed subpart (a)(2), we specifically ask for projects designed to examine inequities and increase the number and proportion of educators from traditionally underrepresented backgrounds or the communities they serve with the intention of including more of those voices.

*Changes:* None.

### **Priority 3—Supporting a Diverse Educator Workforce and Professional Growth To Strengthen Student Learning**

*Comments:* Several commenters expressed their support for Priority 3 and stated that the priority focused on the full pipeline of educator preparation and growth, as well as promoting a diverse educator workforce. Regarding educator preparation, they supported the preparation of certified teachers.

Multiple commenters supported the focus on a diverse educator workforce, especially programs that include comprehensive supports, build an educator workforce from the community, include pipelines for developing educators, align with existing efforts to recruit and support educators, and support student learning. Multiple commenters reiterated the importance of professional development for both new and experienced educators that is job-embedded; culturally responsive; focused on student social, emotional, and academic needs; integrates technology; and includes a focus on students' families and the needs of the community. One commenter favorably noted that some of the areas of professional development outlined in the priority overlap with the work after-school educators do. Lastly, commenters supported the inclusion of universal design for learning. One commenter, though, suggested that we revise subpart (c) to include "accessibility" and "accommodations" in addition to universal design for learning, citing research related to working with children or students with disabilities during educator preparation.

*Discussion:* We appreciate the commenters' support for the priority and agree on the importance of evidence-based educator preparation programs; credentials, especially in shortage areas; a diverse educator workforce; and professional growth. We do not think it is necessary to add "accessibility" and "accommodations" to subpart (c), as educators can be prepared in these areas in the educator preparation programs, and we think universal design for learning also can incorporate accessibility and accommodations without specifically adding language to the priority.

*Changes:* None.

*Comments:* One commenter proposed splitting the priority into two priorities, with the first priority focused on educator preparation and the second priority focused on professional growth and student learning.

*Discussion:* We recognize that in previous iterations of the Secretary's Supplemental Priorities, the various pieces of the educator pipeline have been addressed in separate priorities. However, as we stated in the background to the NPP, "rather than a priority that is focused solely on educator professional development, the proposed priority addresses the needs of all educators, all aspects of the educator pipeline, and the diversity of and equitable access to those educators. This approach to the priorities provides a vision for systems-level approaches that

build capacity for long-term change." As such, we are retaining Priority 3 as one comprehensive priority.

*Changes:* None.

*Comments:* A few commenters expressed the importance of prioritizing HBCUs, TCUs, and MSIs in preparing educators and recommended the Department prioritize these institutions so that they have the necessary resources for their educator preparation programs.

*Discussion:* We agree that it is important that institutions, especially institutions that prepare a diverse set of educators, have the resources needed for those programs. We think that a focus on these institutions and their resources can be done through Priority 2 in combination with Priority 3.

*Changes:* None.

*Comments:* A few commenters proposed that Priority 3 include a recognition of the economic challenges early learning educators face, from loan forgiveness to compensation and benefits. One commenter also noted the inconsistent State requirements for early learning educators, the lack of professional development, and their mental health needs. Another commenter highlighted the shortages of early learning educators.

*Discussion:* We agree that there are economic challenges faced by early learning educators and recognize the important role early learning educators play in supporting the development of children. While early learning preparation standards are established at the State and local levels, we agree that early learning educators are an integral part of a diverse educator workforce and recognize the value of professional growth to strengthen student learning; however, we do not think any changes to the priority are necessary as we believe the priority is already inclusive of early learning educators.

*Changes:* None.

*Comments:* A couple of commenters recommended adding a new subpart to the priority specifically for school leaders to address school climate.

*Discussion:* We recognize the importance school leaders play in helping to establish school climate. Proposed subpart (b)(1)(vii)(5) of Priority 2 (now final Priority 2 subpart [(a)(2)(v)] specifically addresses school climate and supportive, positive, and identity-safe education or work-based settings. Therefore, given there is a priority and subpart that specifically address school climate, and the fact that school leaders are included in the definition of "educator" and therefore all references to educators in Priority 3,

we do not think a new subpart is necessary.

*Changes:* None.

*Comments:* One commenter requested that we ensure that diverse educators prepared under Priority 3 are not segregated, stating that all students benefit from diverse educators. Further, the commenter recommended that in discussing diverse educators, we include language diversity. Another commenter recommended that diversity also include LGBTQI+ educators and alternative credentialing programs to prepare more LGBTQI+ educators.

*Discussion:* We agree that all students, not just students of color, benefit from having access to diverse educators. We do not think that the priority would result in isolating particular groups of educators; rather, it is intended to diversify the educator workforce more broadly. Additionally, we agree that a diverse educator workforce includes educators with diverse language backgrounds and LGBTQI+ educators, but we do not believe that any additional language in the priority is necessary, nor that including language for alternative credentialing programs for specific groups of educators is needed.

*Changes:* None.

*Comments:* One commenter proposed that we add a new subpart in Priority 3 under which grantees would collect, track, and report data on educator diversity and, after examining the data, address disparities in graduation rates, passage rates for certification and licensure exams, successful employment, retention, and more.

*Discussion:* We agree that an important aspect of the effort to promote diverse educators is understanding and addressing the issues that limit diverse educators from succeeding. As such, we propose adding a new subpart to the priority.

*Changes:* We added a new final subpart (c) focused on examining and addressing issues related to the success of diverse educators and reordered the remaining subparts of the priority.

*Comments:* Multiple commenters had recommendations related to the professional development pieces of the priority, specifically proposed subpart (g)(1). The commenter requested adding "evidence-based" in addition to "high-quality" and "job embedded" to describe professional development. Another commenter suggested that the priority emphasize professional development for educators to support children with disabilities and mental health needs. A third commenter suggested that the Department add subparts focused on professional

development for “students’ breadth of skills” and “whole learner approaches.”

*Discussion:* We appreciate commenters’ recommendations to focus the professional development pieces of this priority and recognize the importance of utilizing the existing evidence base to support the professional development. We can apply an appropriate evidence level established in 34 CFR 75.226, and we think that approach is preferable to adding “evidence-based” as suggested by the commenter in the specified subparts because it will allow the Department to tailor the evidence required to individual programs, as appropriate. We also support professional development designed to address the needs of children with disabilities and students’ mental health needs in final subpart (h)(1)(iv) and in Priority 1 (c), and the necessary skills all students need to engage in learning. We think all these aspects of professional development can be covered under the priority as written.

*Changes:* None.

*Comments:* A couple of commenters proposed changes to Priority 3 related to educator working conditions, suggesting that it include teacher leadership and a more active role for teachers in decision making in schools and strong inclusion of teacher voice in policies such as student discipline procedures and demands on teachers’ time. In addition, one commenter recommended that the priority support projects designed to assess the reasons for teacher turnover so that those issues can be addressed. Another commenter suggested that the priority focus on teacher salaries and alignment of those salaries with the cost of living.

*Discussion:* We agree that working conditions have a significant impact on the educator workforce. This priority focuses on educators, which includes teachers, and this may include teachers’ involvement in school decision making. The priority is also aimed at retaining a diverse educator workforce and addressing turnover will be central to retention. Lastly, proposed subpart (f) (now final subpart (g)) of the priority is specifically about hiring, supporting, and retaining educators, including developing compensation systems. As a result, we believe the priority as written already addresses the suggestions from commenters.

*Changes:* None.

*Comments:* One commenter suggested an additional subpart to the priority to incorporate more student engagement in providing feedback on educators and their involvement in assessments, utilizing incentives for performance

pay, and mandating specific trainings, such as conflict resolution.

*Discussion:* We appreciate the commenter raising the importance of student engagement and agree on ensuring student voices are heard. Although we appreciate the commenter’s recommendations for how this priority could be expanded, we want to clarify that the priority could allow for projects like those described by the commenter so long as the projects are designed to diversify the educator workforce and support professional growth for educators. Applicants have the discretion to determine what approach or intervention will best address the priority and meet the needs of the targeted population.

*Changes:* None.

*Comments:* Multiple commenters provided recommendations related to educator preparation programs and credentialing. Specifically, they recommended we consider highlighting “grow your own” programs that develop educators from the community, dual enrollment programs, and how college and career pathway programs think through supports for students. One commenter suggested adding the subparts under proposed (g)(1) of Priority 3 to subpart (a), arguing that it is important for newly prepared educators to be prepared in these same areas previously listed. Regarding credentialing, a few commenters suggested the Department include “dual certification,” and another commenter requested that the Department include a focus on two specific shortage areas: Dual credit educators and career and technical education educators. Another commenter recommended that subpart (b) include additional language to incentivize the recruitment and retention of certified educators in high-need schools.

*Discussion:* We agree with the importance of recruiting from the community for future educators as well as other programs that allow educators to balance college and career as they proceed through the preparation program. The priority as written supports these efforts. Applicants have the discretion to determine what approach or intervention will best address the priority and meet the needs of the targeted population. Likewise, there is nothing that precludes educator preparation programs from incorporating the areas discussed in the professional development section of the priority in these educator preparation programs. Regarding the request to identify specific credentialing programs in the priority, we do not think it is necessary to list specific credentials

beyond the shortage area language of the priority, as States and districts make determinations, based on local needs, of their shortage areas; however, we do agree that it is important to draw attention to dual certification as it may be used to help address shortage areas. In reviewing the priorities and the usage of “shortage areas” in relation to credentials, we noticed a discrepancy in usage; instead of “shortage areas,” Priority 2 refers to “high-need fields.” To be consistent, we will use “shortage areas” in both priorities. Regarding the comment on high-need schools, we do not think it is necessary to add language regarding educator placement in high-need schools, as proposed subpart (f) (now final subpart (g)) of Priority 3 focuses on building and expanding the educator workforce in districts with high rates of poverty.

*Changes:* In Priority 3 we are adding “or dual certification” after “certification” to subpart (b) of the priority. In Priority 2, subparts (b)(3) and (b)(4), we are changing “high-need fields” to “shortage areas.”

*Comments:* Multiple commenters offered recommendations related to financial incentives, supports, and compensation for educators. One commenter requested that we add a focus on expanding, in addition to implementing, loan-forgiveness programs under subpart (f). Another commenter recommended supports for educators related to licensure fees. A third commenter suggested that the priority address the cost of assessment fees for educators who commit to teach in a school district as well as licensure endorsements in leadership, coaching, and mentoring. Another commenter recommended that the term “compensation” include comprehensive benefits packages. Finally, one commenter, while recognizing that the priority focuses on underserved students, recommended we add in proposed subpart (e) (now final subpart (f)) a focus on financial incentives in high-need schools.

*Discussion:* We appreciate commenters’ recognition of the importance that financial incentives and compensation play in attracting and retaining educators. We agree that, along with implementing loan-forgiveness programs, Priority 3 should promote expanding loan-forgiveness programs. We do not agree, though, that subpart (e) should be limited to high-need schools, as diverse educators in all schools could benefit from loan-forgiveness and other programs based on their meeting service obligation requirements. We are aware of the costs associated with licensure and assessment fees and believe

comprehensive compensation can include coverage of these fees. In addition, proposed subpart (f)(2) (now final subpart (g)(2)), related to compensation systems, allows for inclusion of licensure endorsements and benefits packages and those applicants have the discretion to determine what compensation approach will best address the priority and meet the needs of the targeted population.

*Changes:* We have added a reference to expanding loan forgiveness programs to final subpart (f) of the priority.

*Comments:* Multiple commenters had recommendations for proposed subpart (f) (now final subpart (g)) of Priority 3. Commenters recommended adding charter schools in addition to high-poverty districts in proposed subpart (f), stating that with the hiring autonomy charter schools often have, charter schools that are a part of a local educational agency could be disadvantaged by not specifically being identified in the priority. One commenter also requested that we address, in proposed subpart (f), educator wellness and social and emotional health. Another commenter suggested a new subpart on educator involvement in change initiatives, to help support educator retention through educator engagement.

*Discussion:* We appreciate the commenters' recognition that the autonomies granted to charter schools include hiring processes and decisions; however, we do not agree that not specifically identifying charter schools would favor any other applicant over charter school within this subpart. As to adding an additional subpart on educator wellness and their social and emotional health, these issues are covered under Priority 1 and do not require a new subpart under Priority 3. We agree that focusing on educator retention through their involvement in change initiatives is important and aligns with the intent of the priority as it is a way to help support and ensure educator engagement and, in turn, improve retention.

*Change:* We have added a new final subpart (g)(4) on educator involvement in change initiatives which states increasing educator retention by providing opportunities for educators to be involved in the design and implementation of local and district wide initiatives that advance systemic changes.

*Comments:* A few commenters made recommendations about proposed subpart (f)(3) of Priority 3 related to data systems, with one commenter supporting the subpart and encouraging an emphasis on how well-designed data

systems inform student learning and working conditions. Another commenter requested the addition of a subpart focused on data sharing to inform curriculum for early learning education.

*Discussion:* We agree that using data to inform teaching, learning, and working conditions is important for schools and districts; however, we do not think it is necessary to add a subpart that is focused on data systems for human capital management. Applicants can consider how best to use data to inform applications in response to all the priorities, including priorities focused on COVID-19 and equity, as well as how best to share the data. This would not need to be explicitly included within the priority to allow for multiple methods to be used.

*Change:* None.

*Comments:* A few commenters supported proposed subpart (g)(1)(i) of Priority 3 and recommended that the subpart emphasize digital citizenship skills and competencies as well as student mastery of knowledge.

*Discussion:* We appreciate the support for this subpart and agree that an emphasis on instruction that is engaging, utilizes technology, and develops critical thinking skills is important. While digital citizenship skills and mastery of knowledge are important, this subpart is focused on the instructional component of learning, and we do not think it is necessary to add anything additional to the priority.

*Changes:* None.

*Comments:* Multiple commenters supported the list of key transitional stages in proposed subpart (g)(1)(ii) (now final subpart (h)(1)(ii)), with one commenter emphasizing the importance of the transition to work and ensuring that those transitioning to work have the necessary understanding of performance expectations in the workplace. Another commenter recommended adding early learning to the list, noting the importance of the transition from early learning to elementary schools, especially for English learners and children with disabilities.

*Discussion:* We agree that the successful transition to work requires that students and their families are equipped with the knowledge necessary for this transition, including an understanding of accountability systems. We think this knowledge of how we focus on accountability is embedded in this transition period and does not need to be specifically addressed. We also recognize that the transition from early learning to elementary school is critical, especially for some populations of students, but

since the priority is written to support transitioning into the setting included in the list, the transition from early learning to elementary school is covered under elementary school in what is now subpart (h)(1)(ii)(A).

*Changes:* Added "early learning" to what is now subpart (h)(1)(ii)(A).

*Comments:* One commenter suggested that proposed subpart (g)(1)(iii) of Priority 3 be expanded to include professional development for English learner specialists and general education educators with the intent of ensuring all educators are prepared to meet the needs of English learners.

*Discussion:* We agree that all educators should be prepared to meet the needs of English learners; however, given that subpart (h)(1) is focused on professional development, we do not think additional language is needed under (h)(1)(iii)]. The language of what is now (h)(1)(iii), which is unchanged from the proposed language in (g)(1)(iii), addresses professional development to meet the needs of English Learners; because it is worded broadly enough to encompass both specialists and general education teachers, additional language is not needed.

*Changes:* None.

*Comments:* Multiple commenters supported proposed subpart (g)(1)(iv) (now final subpart (h)(1)(iv)) of Priority 3 that specifically addresses meeting the needs of children or students with disabilities. In their support of the priority, one commenter recommended ensuring that new educators are made aware of the specific supports and processes in a district so that the educator is better prepared to serve children or students with disabilities. The commenter also recommended that, in meeting the needs of children or students with disabilities, educators should understand disabilities so that issues related to them are not misunderstood and treated as disciplinary issues. One commenter recommended adding language to include universal design for learning and evidence-based practices to the subpart. Another commenter recommended using the term "most significant cognitive disabilities" to align with the ESEA.

*Discussion:* We agree on the importance of meeting the needs of children or students with disabilities and agree on the importance of utilizing universal design for learning and evidence-based practices. Priority 3 includes universal design for learning in subparts (d) and (e), and Priority 2(a)(2)(i)(A) also incorporates it. We can apply an appropriate evidence level established in 34 CFR 75.226, and we

think that approach is preferable to adding “evidence-based” as suggested by the commenter in the specified subparts because it will allow the Department to tailor the evidence required to individual programs, as appropriate. We support the commenter’s recommendations that educators be made aware of district supports and processes and that educator preparation include better understanding of disabilities to prevent unnecessary discipline. The proposed priority supports these efforts. Applicants have the discretion to determine what approach or intervention will best address the priority and meet the needs of the targeted population. Lastly, we agree that there should be alignment, where possible, with appropriate statutes and therefore agree that the priority should refer to “students with the most significant cognitive disabilities.”

*Changes:* We have added “cognitive” after “most significant” in final subpart (h)(1)(iv) of Priority 3.

*Comments:* Under proposed subpart (g)(1)(v) (now final subpart (h)(1)(v)) of Priority 3, one commenter requested adding “ability” to the list of inclusive pedagogy to ensure that pedagogy also focuses on the needs of children or students with disabilities.

*Discussion:* We agree that inclusive pedagogy should include children or students with disabilities. To be consistent with other Department regulations with similar language, we are adding “disability status” to the list of inclusive pedagogy.

*Changes:* We have added “disability status,” to subpart (h)(1)(v).

*Comments:* One commenter recommended adding “underserved students” to the end of proposed subpart (g)(1)(viii) (now final subpart (h)(1)(viii)) of Priority 3 to focus the work in these classroom environments on this specific population.

*Discussion:* We agree that an emphasis on underserved students is important. Given the priority itself has a focus on underserved students, we do not think it is necessary to add underserved students to this subpart, as well.

*Changes:* None.

*Comments:* A couple of commenters had recommendations specific to assessments under proposed subpart (g)(2) (now final subpart (h)(2)) of Priority 3, including ensuring that assessments are not just one “high-stakes” assessment and that assessments used to gauge work readiness have a broader focus than just career and technical education, including being

performance-based, and align with State and industry standards.

*Discussion:* We appreciate commenters’ recognition that assessments should not just focus on end-of-year or other high-stakes assessments and that assessments should also more broadly look at the needs of all students. The proposed priority is not focused on high-stakes assessments alone. As to work readiness, while the subpart refers to career and technical education, these assessments, which are designed to measure student learning, can include other standards, such as State or industry standards. Applicants have the discretion to determine what assessments will best address the priority and meet the needs of the targeted population.

*Changes:* None.

#### **Priority 4—Meeting Student Social, Emotional, and Academic Needs**

*Comments:* Many commenters expressed support for Priority 4, stating that social and emotional learning is important to overall well-being. Several commenters strongly supported the priority and expressed agreement with the focus on trauma-informed pedagogy.

*Discussion:* We appreciate the support for this priority and agree with the commenters that meeting social and emotional needs is central to supporting students’ overall well-being.

*Changes:* None.

*Comments:* Several commenters commended the inclusion of experts and the systemic implementation of evidence-based practices in social and emotional learning. One commenter recommended the addition of the term “evidence-based” to subparts (b)(2), (b)(5), and (h). Another commenter urged the Department to review proposals that include a social and emotional learning component to build on the robust evidence base in the field of social and emotional learning and ensure that the evidence base is high quality. One commenter recommended that the Department focus on implementation of evidence-based practices in addition to the evidence supporting why a practice is effective and noted the need for access to technical assistance around implementation.

*Discussion:* We agree with the commenters on the importance of building and using evidence in this area. In addition to the use of these priorities, we can apply an appropriate evidence level established in 34 CFR 75.226, and we think that approach is preferable to adding “evidence-based” as suggested by the commenter in the

specified subparts because it will allow the Department to tailor the evidence required to individual programs, as appropriate. We agree that the efforts to support implementation of evidence-based practices are critical.

*Changes:* None.

*Comments:* Several commenters made suggestions for use of Priority 4 in the Department’s competitive grant programs. One commenter expressed support for this priority and encouraged the Department to maintain the focus on improving students’ social, emotional, academic, and career development, including through nutritional, mental health, school climate, and other supports. One commenter expressed support for the inclusion of this priority and encouraged the Department to work with the education community to include this priority into Federal programs. Another commenter supported the priority and argued that including this as a competitive preference priority in future grant competitions could help colleges expand these types of programs. Another commenter expressed support for the priority and urged flexibility within ESEA Title II and Title IV formula grant programs to support professional development to address social and emotional learning and evidence-based trauma informed practices. In addition, the commenter urged the Department to provide programmatic and financial resources to help States and districts implement and educate families and communities on trauma-informed and culturally relevant practices.

*Discussion:* We appreciate the input of these commenters. These priorities are intended to be a menu of options for the Department to use in our discretionary grant programs. As noted earlier, the Department may choose which, if any, of the priorities or subparts are appropriate for a particular program competition, as well as the selection criteria. If the Department chooses to use a supplemental priority, it will decide whether the priority will be used as an absolute, competitive preference, or invitational priority in the grant competitions. As these priorities capture policy areas of general importance for the Department, there are also related efforts to provide technical assistance and guidance related to formula grant programs.

*Changes:* None.

*Comments:* One commenter supported the emphasis on social and emotional needs and engagement recommended in Priority 4 and recommended incorporating these aspects of education into K–12 school

accountability frameworks. Another commenter recommended revising subpart (a) to include parents.

*Discussion:* We appreciate the commenters' points on aligning with school accountability frameworks and involving parents. Adding references to school accountability could focus the priority on K–12 education as school accountability is part of ESEA Title I, and these priorities are for all discretionary grants including those focused on postsecondary education. Family involvement is included in several subparts throughout the priority where we think their involvement is most applicable. As such, we decline to make these changes to keep the priority flexible.

*Changes:* None.

*Comments:* Several commenters articulated the connection between social and emotional well-being and academics, with some commenters stating that these skills are too often taught separately. One commenter highlighted that evidence supports that more explicitly pair social and emotional learning efforts with academic support can contribute to academic growth. Another commenter suggested specific additions to tie the connection between academics and social and emotional learning into a larger asset-based approach.

*Discussion:* We appreciate the commenters' arguments in favor of making the connection between social and emotional learning and academic support clear. We think that is best accomplished through the priority as written to enable the priority to be considered in a wider breadth of programs.

*Changes:* None.

*Comments:* Several commenters expressed support for the inclusion of partnerships in the priority. One commenter encouraged the Department to foster partnerships between educational institutions and mental health professionals, and another commenter noted the strong focus on community partners and trusting relationships. Another commenter noted that, in immigrant communities, there can be a level of fear and distrust of government agencies. Another commenter recommended that school-community partnerships supplement existing services and involve collaboration between community providers and existing school personnel (e.g., school psychologists, counselors, social workers).

*Discussion:* We appreciate the support from these commenters and agree that partnerships are important to include in this priority. Building trust with

communities is essential to having the partnerships achieve their intended outcomes. We agree that collaboration with existing school personnel is important and, to address each of the potential collaborators identified, are adding a definition for “educator” that includes the personnel identified by the commenter.

*Changes:* We are adding a definition of “educator” that includes the personnel identified by the commenter.

*Comments:* A commenter proposed adding language to subpart (b)(3) of Priority 4 that would include the diversity of stakeholders in engagement efforts to allow for meaningful representation in decision-making.

*Discussion:* We appreciate and agree with the commenter's point that engagement efforts should include individuals from diverse backgrounds who are representative of the community.

*Changes:* We are rephrasing subpart (b)(3) so that it reads, “Engaging students (including underserved students), educators, families, and community partners from diverse backgrounds and representative of the community as partners in school climate review and improvement efforts.”

*Comments:* Some commenters recommended revising subpart (b)(4) of Priority 4 to refer to applicants involving educators in decision-making, including in such areas as establishing school discipline procedures. One commenter recommended incentivizing the elimination of zero tolerance and exclusionary disciplinary practices while also prioritizing the development and implementation of culturally informed discipline policies. One commenter asked to add to Priority 4 a reference to specialized training for educators and administrators on school discipline, restorative practice, trauma-informed environments, and implicit bias. Another commenter recommended addressing in subpart (b)(4) how positive parent and family interaction with the schools can be helpful in addressing negative discipline styles. One commenter recommended applying this priority to the competitions within the CSP.

*Discussion:* We agree that educators should be involved in establishing disciplinary practices and that related training is important. We believe that it is important to advance culturally informed discipline practices as noted in the priority, which we expect would incentivize the reduction or elimination of zero tolerance policies and exclusionary practices. In response to the comment related to using this

priority in the CSP program, if the Department chooses to use a supplemental priority, it also will decide whether the priority will be used as an absolute, competitive preference, or invitational priority in a grant competition. We also agree that positive parent and family interaction is valuable and believe that this is also addressed within Priority 1 and Priority 2.

*Changes:* We are revising subpart (b)(4) of Priority 4, by involving educators, students, and families, in decision-making about discipline procedures and providing training and resources to support educators.

*Comments:* Several supported the focus of subpart (b)(4) of Priority 4 on the disproportionate use of discipline towards students with disabilities, especially students of color with disabilities, and concerns that such students should not lose instructional time. One commenter emphasized the need to move away from discriminatory discipline policies toward evidence-based policies that create safe and inclusive environments.

*Discussion:* We appreciate the support of these commenters and agree with the importance of examining discipline policies.

*Changes:* None.

*Comments:* One commenter supported the Department's focus in subpart (b)(5) of Priority 4 on real-world, hands-on learning to address student needs, noting this approach will help students build technical and essential employability skills and social capital. Two other commenters proposed modifications to subpart (b)(5). One commenter suggested including family service learning in this subpart, noting the value of a multi-generational approach to addressing the needs of a community. Another commenter suggested that the Department provide incentives to connect work-based learning to career-focused instruction, along with other strategies, to increase college and career readiness.

*Discussion:* We agree that real-world, hands-on learning opportunities should be connected to instruction to bolster college and career readiness. While family service learning would be an appropriate strategy in some programs and communities, there may be situations where it is not practicable or aligned with program goals. Thus, we decline to make that change.

*Changes:* We have revised subpart (b)(5) of Priority 4 to clarify that real-world, hands-on learning opportunities should also be aligned with instruction.

*Comments:* One commenter expressed general support for subpart (d). Another

commenter suggested adding “linguistically inclusive practices” in addition to trauma-informed practices within the subpart.

*Discussion:* In designing a grant competition, the Department may choose to use one or more subparts in a particular grant competition. Subpart (c)(3) refers to the diversity of evidence-based professional development and as linguistically inclusive practices were identified as an element of the diverse practices; we believe that it could be coupled with this subpart to have an effect similar to the commenter’s suggestion.

*Changes:* None.

*Comments:* One commenter expressed support for subpart (f). Another commenter recommended adding “and accessible” after “physically healthy,” citing a U.S. Government Accountability Office (GAO) study related to school buildings and physical barriers to people with disabilities. The commenter urged the Department to include physical accessibility in improvements to school infrastructure. Another commenter suggested strengthening the various sections of this priority by recognizing the physical and mental health needs of young children.

*Discussion:* We agree with the commenter on the need to ensure that school buildings are accessible to persons with disabilities. The Department’s regulations implementing, in compliance with the requirements of Section 504 of the Rehabilitation Act of 1973, which prohibits disability discrimination in federally assisted programs and activities, contain requirements applicable to the physical accessibility of facilities and the accessibility of recipients’ programs or activities. Recipients of Federal funds from the Department are required to comply with these regulations, which ensure that persons with disabilities are not discriminated against because a recipient’s facilities are inaccessible to or unusable by persons with disabilities. In addition to Section 504’s requirements, the Department of Justice regulations implementing Title II of the Americans with Disabilities Act prohibit disability discrimination by State and local governmental entities (Title II) regardless of their receipt of Federal funds. The Title II ADA regulations also contain accessibility requirements to ensure nondiscrimination. The Department’s Office for Civil Rights enforces Section 504 and, in the education context, shares in the enforcement of Title II with the Department of Justice to ensure accessibility and equal opportunity for individuals with disabilities. We believe

that the needs of young children are addressed through the inclusion of early learning settings in this priority, so a change is not needed.

*Changes:* None.

*Comments:* Some commenters expressed general support for subpart (g) with one noting that, as schools reopen, the capacity to address students’ mental and emotional well-being is imperative. Another commenter urged the Department to indicate that the services provided must be linguistically and culturally responsive. Another commenter suggested explicitly using the terms “school social worker,” “school psychologist,” and “school counselors” and “other school-based mental health service professionals” as defined in ESEA. Another commenter expressed appreciation for the inclusion of the language “social workers, psychologists, counselors, nurses, or mental health professionals and other integrated services and supports, which may include in early learning environments,” and requested the inclusion of the full range of specialized instructional support personnel in supporting students’ social and emotional learning.

*Discussion:* We agree with adding that services provided should be inclusive, including but not limited to linguistic and cultural inclusivity. We also agree that school-based mental health service professionals and specialized instructional support personnel are important partners in providing these services and believe that the language of the priority is flexible enough to incorporate their work in settings where they are working with students. We decline to be more specific in this subpart so as not to unintentionally exclude services from the priority settings that are not based in an elementary or secondary school.

*Changes:* We have revised subpart (g) of Priority 4 to state that services provided should be inclusive with regard to race, ethnicity, culture, language, and disability status.

*Comments:* One commenter suggested that work-based learning be included in subpart (h) of Priority 4, as it is an impactful form of experiential learning that allows learners to acquire hands-on skills and view firsthand what occurs in the professional setting of their interest.

*Discussion:* We agree with the commenter regarding the value of work-based learning and think that experiential learning includes work-based learning. Therefore, we decline to specifically add work-based learning to the subpart.

*Changes:* None.

*Comments:* One commenter recommended adding adult learning to subpart (j) of Priority 4 and another commenter urged the Department to include language to explain that services provided should be comprehensive, and linguistically and culturally responsive.

*Discussion:* We agree with the recommended additions of adult education and inclusivity to fostering partnerships with multiple entities.

*Changes:* We have added “adult learning providers” to the list of types of organizations that provide services under subpart (j). In addition, we have revised this subpart to include approaches that are inclusive with regard to race, ethnicity, culture, language, and disability status.

#### **Priority 5—Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success**

*Comments:* Several commenters expressed their support for Priority 5. Two commenters expressed appreciation for the focus on transfer pathways while another commenter appreciated the focus on creating student-centered flexible systems of support. Another commenter supported the priority and noted that it could be used in competitions to help students access comprehensive educator preparation programs, and another commenter who supported this priority noted that it could be relevant to programs that support the early childhood workforce. One commenter expressed support for the Department’s inclusion of adult learners in Priority 5. Two commenters applauded the priority’s focus on establishing partnerships with HBCUs, TCUs, MSIs and community colleges. Three commenters expressed support for the priority and recommended that the Department consider using this priority in specific competitions, including the Education Innovation and Research program as well as in programs administered by the Office of Career, Technical, and Adult Education. Two commenters strongly supported subparts (i) and (j) of the priority, with one commenter expressing support for subpart (j) for its focus on evidence-based strategies and further suggested that the Department define “evidence-based strategies” to include strategies that meet the promising evidence definition from the ESEA as well as strategies based on research that use random assignment or quasi-experimental research methods.

*Discussion:* We appreciate the support for this priority and agree with the



commenters about the importance of including each of these topic areas within Priority 5. Although we do not set priorities for specific competitions in this notice, we appreciate hearing feedback from commenters regarding alignment between these priorities and particular programs. We also agree that it is important to emphasize the use of evidence-based practices throughout Department grant programs. The term “evidence-based” is defined consistent with the definitions of the term in 34 CFR 77.1 and section 8101(21) of the ESEA (depending on the authorization of the program that uses the term) and includes strategies based on promising evidence as well as research that meets higher evidence standards such as moderate evidence and strong evidence. Strategies that align with the demonstrates a rationale definition also align with the evidence-based definition, so we decline to specify a particular level of evidence in the priority.

*Changes:* None.

*Comments:* One commenter made several suggestions that they think would improve Priority 5, including partnering with students, providing guidance on creating student-centered, individualized plans for college readiness, ensuring best practices and resources are allocated towards marginalized students, and establishing partnerships with the private sector to promote career and mentorship opportunities. Another commenter noted the priority’s alignment to the purpose of the Federal TRIO programs. The commenter also expressed support for the goal of a diverse educator workforce and suggested the TRIO-Student Support Services program, with its focus area on teacher preparation, could serve as a helpful lever for achieving this goal.

*Discussion:* We thank the commenter for their suggestions and agree that these are helpful points of emphasis. However, we believe that they are already broadly addressed within the priority through the descriptions in each subpart of Priority 5 of project design for traditionally underserved students. As stated previously, the Department does not set priorities for any particular grant program through this notice, but appreciates the commenter’s perspective on opportunities for applying them.

*Changes:* None.

*Comments:* One commenter suggested adding a new subpart to the priority that would support the development and implementation of comprehensive transition and postsecondary programs for students with intellectual disabilities to promote these programs that were

authorized in the 2008 reauthorization of the Higher Education Act of 1965, as amended (HEA).

*Discussion:* We thank the commenter for highlighting the needs of this important population of students and agree with the concern that Priority 5 could be more inclusive of postsecondary students with intellectual disabilities which, in turn, could assist these students in accessing services provided through a wider range of Department grant programs.

*Changes:* We have added subpart (l) to Priority 5 to support the development and implementation of comprehensive transition and postsecondary programs for students with intellectual disabilities under the HEA.

*Comments:* One commenter recommended adding language to Priority 5 to note that the project’s goal should be to help increase employability and access to quality jobs that provide a living wage, strong workplace standards, and work-family supports.

*Discussion:* We share the commenter’s perspective on the importance of these goals. We agree that increasing employability and access to quality jobs are priorities that we consider within a broader category of post-graduate outcomes.

*Changes:* We have added “and post-college outcomes” to subpart (d) after “completion”.

*Comments:* One commenter suggested that the Department add an additional priority area to encourage applicants to conduct equity audits, which are internal reviews of policies and practices to identify those that fail to effectively serve underrepresented students. The commenter expressed that these audits can address a range of issues such as admissions and financial aid, counseling services on campus, instructor diversity, and accessibility for students with disabilities to inform reforms.

*Discussion:* We appreciate the commenters’ suggestions. We recognize that equity audits are one important strategy to promote equity and do not want to limit the field’s approaches. However, we do not think it is appropriate to add an additional priority as the Department has monitoring protocols to ensure that applicants that receive awards comply with the requirements of the competition. Those requirements vary across program offices, but grant recipients must comply with them. We believe these requirements would address many of the concerns raised by the commenter.

*Changes:* None.

*Comments:* One commenter suggested adding the term “evidence-based” to subparts (b), (c), and (h) of Priority 5 to encourage applicants to propose to implement evidence-based strategies in these areas.

*Discussion:* We agree with this commenter on the importance of promoting the use of evidence-based practices to promote postsecondary student outcomes. We also note that in any competition, the Department already has the authority to combine any of these priority subparts with a particular evidence standard established in 34 CFR 75.226. This flexibility allows the Department to tailor the evidence required to individual programs, as appropriate.

*Changes:* None.

*Comments:* One commenter expressed particular concern that Priority 5 does not mention the word “parent” or “family,” noting that many youth and young adults in post-secondary programs are still supported by their parents and families. The commenter suggested revising the priority to include a focus on helping parents to support their youth/young adults in accessing and completing higher education.

*Discussion:* We agree with the notion that many students rely on the support of their families as they progress into and through their postsecondary programs. We note that none of the language in this priority would preclude applicants from proposing projects that support parents of postsecondary students if providing such support is allowable in a specific Department grant program.

*Changes:* None.

*Comments:* One commenter expressed the desire to add a new subpart to Priority 5 related to providing secondary students access to career exploration and/or career advisement so that they are aware of postsecondary opportunities aligned with their academic and career goals, and the steps and supports necessary for that college and career path.

*Discussion:* We thank the commenter and agree that using evidence-based approaches to assist students with career exploration prior to college matriculation can be essential to putting students on a career pathway. Although we note that final subpart (f) includes a focus on career services, we agree with the commenter that a targeted subpart focusing on providing secondary students with career exploration and advisement opportunities is a valuable addition to these priorities.

*Change:* We have revised Priority 5 by adding a new subpart (m) that to

prioritize projects that provide secondary school students with access to career exploration and advising opportunities to help them make informed decisions about their postsecondary enrollment and place them on a career path.

*Comments:* One commenter urged the Department to include language within this priority that acknowledges the large share of adult learners who face challenges such as low and very low levels of formal education, limited English proficiency, high rates of poverty, and employment in low-skilled jobs. The commenter recommended that they receive equitable access to adult education services that are responsive to their needs.

*Discussion:* We appreciate the recommendation by the commenter and agree that many adult learners face challenges. We have addressed those challenges by focusing on adult learners in final subpart (f). Therefore, we think that the inclusion of additional language would be redundant.

*Changes:* None.

*Comments:* One commenter supported the Department's commitment to accessible and affordable higher education but recommended that the Department modify Priority 5 to include support for efforts to lower barriers to obtaining graduate education, particularly for fields experiencing critical shortages, such as school psychology.

*Discussion:* We appreciate the comment, but we do not think a separate focus on assisting students in attaining graduate degrees is necessary. The Department's Office of Postsecondary Education administers a number of programs that are specifically designed to support students in pursuing graduate education, such as: The TRIO-Ronald E. McNair Postbaccalaureate Program, which is designed to provide assistance to help low-income and first generation college students pursue doctoral degrees; the Graduate Assistance in Areas of National Need program, which provides grants to assist students in pursuing graduate degrees in specific areas of national need; the Doctoral Dissertation Research Abroad program, which provides funding to support individual doctoral students to conduct research abroad in modern foreign languages and area studies; as well as various programs authorized by titles III and V of the HEA that are designed to expand the capacity of HBCUs, TCUs, and MSIs to offer graduate education opportunities.

*Changes:* None.

*Comments:* One commenter suggested the Department put a greater emphasis

on establishing partnerships through Priority 5 to effectively smooth transitions for students and reduce barriers. The commenter highlighted issues around delivery of early college credit and reducing the need for developmental education as examples. Another commenter suggested that the Department include specific references to early college credit and recommended that we emphasize the importance of developing college and career pathways systems.

*Discussion:* We thank the commenter for highlighting the importance of, and role of Department grant programs in, establishing partnerships to bridge divides in the educational landscape, including partnerships between secondary and postsecondary schools, as well as partnerships across postsecondary institutions. We believe final subpart (a) of Priority 5 creates clearer pathways for students between institutions by making transfer of course credits more seamless and transparent. We also think proposed subpart (a) of Priority 5 (which became final subpart (b) of Priority 2), which encourage partnerships involving HBCUs, TCUs, and MSIs, as well as Priority 6, which provides the Department with the ability to require or encourage partnerships across Department competitions, address this concern. Regarding the comment about early college credit, we believe that final subpart (h) would allow for the inclusion of such a program.

*Changes:* None.

*Comments:* One commenter recommended adding adult education programs as a fifth category of prioritized institutions in proposed subpart (a) of Priority 5; another commenter suggested adding career and technical education schools as an additional category of prioritized institutions.

*Discussion:* We appreciate the commenters' recommendations and have included both categories in what was subpart(a) of Priority 5 in the NPP. To ensure better application of this subpart, we have moved it to subpart (b) in Priority 2 in this NPP.

*Changes:* We have included adult education and career and technical education in Priority 5 subpart (b).

*Comments:* One commenter suggested that instead of focusing on underserved students at community colleges, HBCUs, TCUs, and MSIs, the Department should instead focus on addressing inequities at well-resourced and highly selective colleges and universities. The commenter further suggested that this priority would further encourage well-resourced institutions to continue

recruiting wealthier, high-achieving white students and noted concern regarding low enrollment rates of underserved students at well-resourced institutions.

*Discussion:* We think that enrollment rates of students from low-income backgrounds are too low across the board, and we agree that there is much work to be done to increase racial and economic diversity in postsecondary education, including at well-resourced and highly selective institutions. We note that multiple subparts within this priority are focused on increasing the number of underserved students who succeed in postsecondary education, regardless of the type of institution. For example, final subpart (b) would give priority to applicants that propose to increase the number and proportion of underserved students who enroll in and complete postsecondary education programs, regardless of whether the institution is well-resourced or under-resourced. The Department also recognizes, however, that HBCUs, TCUs, MSIs and community colleges educate a disproportionate number of underserved students, and as a result, any effort to improve postsecondary outcomes for underserved students must include targeted support to these institutions. We have moved references to targeting support to these institutions, including through establishing partnerships with well-resourced institutions and other organizations, to subpart (b) in Priority 2.

*Changes:* None.

*Comments:* One commenter expressed general support for subpart (c) of Priority 5.

*Discussion:* We appreciate the support for the subpart.

*Changes:* None.

*Comments:* One commenter expressed support for the inclusion of "Post-enrollment Success" in the title of Priority 5, but this commenter suggested modifications to highlight career readiness throughout the priority. Specifically, regarding subpart (e), this commenter suggested adding post-graduate outcomes to the list of student outcomes. The commenter suggested several ways the Department could define post-graduate outcomes, such as graduate school matriculation, as well as several metrics that could be used to characterize a strong first job.

*Discussion:* We appreciate the recommendations and think that post-enrollment broadly includes any point on a student's trajectory. We agree that there are many ways to define post-graduate outcomes and that adding post-graduate outcomes would be beneficial to add to the range of data identified as

post-enrollment outcomes. Including these data would allow a more coherent sense of what is meant by success than simply ending with graduation.

*Changes:* We have added post-college outcomes to the subpart, which is now designated as subpart (d).

*Comments:* One commenter strongly supported proposed subpart (e).

*Discussion:* We appreciate the support for the proposed subpart, which is now final subpart (d). We agree that a system of high-quality data will benefit students.

*Changes:* None.

*Comments:* One commenter suggested requiring alignment of data-related efforts to statewide goals (e.g., for postsecondary attainment) with a focus on measuring equity gaps and identifying strategies for ongoing monitoring and accountability.

*Discussion:* We appreciate the commenter's suggestion and note that there are current data collections from other areas within the Department that focus on equity gaps. Additionally, the Department is required to monitor grantees and do so in a myriad of ways; therefore, we will not be adding this language to the priorities.

*Changes:* None.

*Comments:* One commenter emphasized the importance of ensuring that undergraduate students have access to coursework and activities that prepare them for the workforce. This commenter further noted the importance of providing high-quality career preparation to undergraduate students across all majors and programs of study. This commenter suggested that the Department add "Credit-bearing academic undergraduate courses focused on career," after "career services" in proposed subpart (f) of Priority 5.

*Discussion:* We appreciate the recommendation of the commenter and agree that there is a need for undergraduate students to have access to coursework and activities that prepare them for the workforce. We included structured/guided pathways within the priority to ensure that guardrails are provided for students and agree that the inclusion of the recommended language would be helpful to ensure that students were not just given guardrails, but also taking necessary classes within their major to avoid spending unnecessary time and money.

*Changes:* We have revised proposed subpart (f) to include "credit-bearing academic undergraduate courses focused on career" after "career services" in what is now final subpart (e).

*Comments:* One commenter suggested connecting efforts around integrated approaches with college and career pathway system development, including guided pathways and career and technical education and bridge programming that can accelerate students in subpart (f) of Priority 5.

*Discussion:* We appreciate the commenters' suggestions and agree that creating clear connections is beneficial to students. We believe that these connections are already included in the priority.

*Changes:* None.

*Comments:* One commenter recommended that the Department revise proposed subpart (g) (now final subpart (f)), which focuses on increasing the number of individuals who return to the educational system, to specifically recognize those individuals who return to the educational system to gain English language skills and/or to integrate into society.

*Discussion:* We appreciate and agree with this comment and recognize the unique challenges for English learners who return to the educational system.

*Changes:* In an effort to increase the number of English learners who return to the educational system to gain English language skills, we have added English language learning in subpart (f) of Priority 5.

*Comments:* One commenter expressed support for proposed subpart (h). This commenter appreciated that the language provides applicants flexibility to integrate multiple approaches to supporting learners.

*Discussion:* We appreciate the support for the proposed subpart, which is now subpart (g) in this NFP, and agree that multiple approaches to delivering instruction to students are necessary, depending on the context. We also agree that Priority 5 affords applicants the flexibility to combine multiple approaches to best support students.

*Changes:* None.

*Comments:* One commenter expressed support for the inclusion of work-based learning in proposed subpart (h) (now final subpart (g)) of Priority 5, stating that work-based learning is essential to creating an equitable and racially just economic recovery. The commenter also suggested that work-based learning must be year-round and layered into all levels of education. This commenter suggested adding a new subpart focused on building community capacity to develop or strengthen effective career readiness programs by supporting cross-system collaborative partnerships composed of leaders from education, workforce, government, social services, philanthropy, and the private sector to

provide work-based learning opportunities and high-quality college and career pathways.

*Discussion:* We appreciate the commenter's support for the inclusion of work-based learning and agree that partnerships are important components of this work; however, we address cross-agency and entity partnerships in Priority 6 and work-based learning in Priority 2, which may be used in combination with this priority, so no changes are needed.

*Changes:* None.

*Comments:* One commenter recommended the Department implement career and technical education models that are grounded in labor market information and aligned from secondary through postsecondary education.

*Discussion:* We appreciate the recommendation and believe that proposed subparts (i) and (j) (now final subparts (h) and (i)), which focus on the use of evidence-based strategies, would ensure that current and proven models would be used that could include labor market information but is not restricted to that data source. Therefore, we have not included this additional language.

*Changes:* None.

*Comments:* One commenter supports the focus in proposed subpart (k) (now final subpart (j)) of Priority 5 on the transitional phase from high school to adulthood, especially the subpart that would prioritize applications that connect students and adults with disabilities with transition services under the Vocational Rehabilitation program or the IDEA.

*Discussion:* We appreciate the support for subpart (j) and agree with the importance of the inclusion of transition services under the Vocational Rehabilitation program and the IDEA.

*Changes:* None.

*Comments:* One commenter recommended adding language to subpart (j) of Priority 5 that expressly supports full participation and inclusion in postsecondary institutions, pre-apprenticeship programs, apprenticeships, and other workforce training. The commenter cited the need for additional attention for such programs to become consistent pathways to employment for individuals with disabilities. Another commenter suggested modifying subpart (j) to include language that extends eligibility for services for students with disabilities nearing age 22. The commenter noted the need to extend eligibility of individuals for these services given the learning loss due to COVID-19. Multiple commenters also referred the Department to comments

made by another commenter to broaden this priority to ensure it is inclusive of all students with disabilities.

*Discussion:* We appreciate the commenter's recommendations and agree that it is important to ensure that the transition of services fully encompasses the intended outcomes and recipients. We agree that education outcomes are relevant, and that inclusion of that edit strengthens the subpart. Under Part B of the IDEA, a free appropriate public education (FAPE) must be made available to all children with disabilities residing in the State within the State's mandated age range for the provision of FAPE. Entitlement to FAPE begins at a child's third birthday and could last until the child's 22nd birthday, depending on State law or practice, which would render the second requested edit redundant.

*Changes:* We are adding "or education" after "employment outcomes" in final subpart (j).

#### **Priority 6—Strengthening Cross-Agency Coordination and Community Engagement To Advance Systemic Change**

*Comments:* Many commenters expressed general support for Priority 6 and its emphasis on interagency collaboration. Commenters noted this priority acknowledges that schools are frequently the center of the community for students and families, and that strong family and community engagement is associated with improved student outcomes.

*Discussion:* We appreciate the support for the priority and agree with these comments on the central role school's play.

*Changes:* None.

*Comments:* Several commenters expressed support for using this priority in different ways. One commenter advocated for making this a foundational priority across all grants. Another commenter recommended the Department prioritize partnerships that align with guidance developed by the Institute for Educational Leadership, the Coalition for Community Schools, and the National Association of School Psychologists.

*Discussion:* We appreciate these comments and note that several components of this priority are aligned with the community school's model. If the Department chooses to use the supplemental priorities, it also has discretion to decide how the priorities should be used in the grant competitions.

*Changes:* None.

*Comments:* One commenter suggested facilitating cross-agency budgeting and

resourcing to ensure basic educational needs are being met.

*Discussion:* We appreciate this comment and recognize the importance of examining budgeting. We think the priority as written allows for this inter-agency budgeting and resourcing.

*Changes:* None.

*Comments:* One commenter expressed support for Priority 6 and suggested modifying the language to explicitly include philanthropy and the private sector more generally.

*Discussion:* We appreciate the commenter's focus on philanthropy and the private sector. We believe that community engagement can include philanthropy and the private sector, and subpart (c) focuses on partnerships that include an array of partners, including local nonprofit organizations, businesses, and philanthropic organizations. As such, we do not think any changes to the priority are necessary.

*Changes:* None.

*Comments:* One commenter suggested adding afterschool and summer programs to the list of needs to address included in subpart (a) of Priority 6.

*Discussion:* We believe that some specific services provided through afterschool and summer programs could be addressed through the activities already included on this list, including key field-initiated focus areas. In addition, afterschool and summer programs are included in other priorities, which could be used in combination with this one in a particular grant competition.

*Changes:* None.

*Comments:* One commenter suggested adding legal services to the list of issues to address through the coordinated efforts among Federal, State, or local agencies, or community-based organizations that support students under subpart (a), as these are often a key area of need for diverse groups of underserved students.

*Discussion:* We appreciate this comment. However, we think these services may already be within the scope of this priority as well as grant programs administered by other Federal agencies.

*Change:* None.

*Comments:* Several commenters recommended adding mental health or clarifying that health includes mental health.

*Discussion:* The Department appreciates the point made by these commenters and agrees with the important addition of mental health.

*Changes:* We are revising subpart (a)(7) to read: "Health, including

physical health, mental health, and behavioral health and trauma."

*Comments:* A commenter suggested specifying that school diversity includes student and educator diversity.

*Discussion:* We agree that this specificity around diversity is helpful.

*Changes:* We are adding "including student and educator diversity" to subpart (a)(9).

*Comments:* One commenter expressed support for the inclusion of workforce development in subpart (a)(11). This commenter further indicated that workforce development should be interpreted to include career preparation for undergraduate students at four-year institutions. Another commenter suggested revising this subpart to refer to college readiness, workforce development and civic life.

*Discussion:* We appreciate the recommendations as we agree that each of these areas of college and career readiness is critical, and especially agree that referring to college readiness and civic engagement would be beneficial towards the goal of advancing systemic change. Workforce development is already included in this subpart.

*Changes:* We have revised subpart (a)(11) through (13) to also include college readiness and civic engagement.

*Comments:* Two commenters recommended that the Department add a new subpart allowing use of funds for infrastructure, citing a June 2020 report from the Government Accountability Office<sup>1</sup> saying that 54% of schools have major systems that need replacing.

*Discussion:* We agree with the importance of investing in school infrastructure. Issues related to healthy learning environments are emphasized in subpart (f) of Priority 4.

*Changes:* None.

*Comments:* One commenter recommended changing subpart (a)(16) to Adult Education and Literacy and moving content in subpart (a)(16) to (a)(17).

*Discussion:* We will renumber to ensure alignment.

*Changes:* We have adjusted the numbering of the subpart to include adult education and literacy in (a)(19).

*Comments:* One commenter expressed support for the inclusion of nonprofit organizations in subpart (c). This commenter noted that because nonprofits are nimble, they can be invaluable partners in Department of Education grants.

*Discussion:* We agree that nonprofit organizations can be very valuable partners and note that they may be

<sup>1</sup> <https://www.gao.gov/products/gao-20-494>.

included within the subpart as currently written.

*Changes:* None.

*Comments:* One commenter who expressed support for this priority overall, articulated particular support for subpart (d). The commenter urged the Department to use this priority in future competitions of the CSP National Dissemination grant. The commenter went on to say that this priority could support accessibility and equity issues in both the National Dissemination and State Entities grant programs.

*Discussion:* We appreciate the commenter's suggestion on how the funds should be used. These priorities are intended as a menu of options for our discretionary grant programs. The Department may choose which, if any, of the priorities or subparts are appropriate for a particular program competition, as well as the appropriate level of funding and selection criteria. If the Department chooses to use a supplemental priority, it will decide whether the priority will be used as an absolute, competitive preference, or invitational priority in a grant competition, as well as the appropriate level of funding and selection criteria, which may include peer-to-peer learning models.

*Changes:* None.

#### Definitions

*Comments:* One commenter supported, in general, the clarity that the definitions offer.

*Discussion:* We appreciate the support for the definitions and think that they will ensure clarity in the use of the priorities.

*Changes:* None.

*Comments:* Multiple commenters recommended adding a definition of "technology," including their own proposed definitions that were intended to help ensure aligning with Federal laws.

*Discussion:* While we appreciate all the commenters' suggestions, we recognize that the definition of technology is continually changing and therefore could create an obsolete definition upon programmatic use. Lastly, the NPP already included the following language to ensure compliance with Federal laws: "Additionally, regarding each technology reference, all technology developed or used under these proposed priorities must be accessible to English learners, in addition to individuals with disabilities . . ."

*Changes:* None.

*Comments:* One commenter requested that we include a definition of identity-safe learning environments.

*Discussion:* While we appreciate the commenter's suggestions, we recognize that the definition of identity-safe is parallel to language within priorities (2)(a)(2)(v) and (4)(b) and (c) that specifically speaks to supporting teachers in creating safe, healthy, inclusive, and productive classroom environments.

*Changes:* None.

*Comments:* One commenter proposed definitions of "competency-based" and "high-quality systems of assessments."

*Discussion:* We thank the commenter and have already included a definition of "competency-based education," which includes mastery of knowledge and skills, and a definition for "high-quality systems of assessments."

*Changes:* None.

*Comments:* One commenter asked that we include definitions of "social and emotional learning," and another commenter noted that social and emotional learning remains under-defined in Federal law and policy and that it should be more explicitly defined.

*Discussion:* We appreciate the request, and we recognize that the definition of social and emotional learning is continually changing and therefore could create an obsolete definition upon programmatic use.

*Changes:* None.

*Comments:* One commenter requested that the definitions of "career and technical education," "work-based learning," and "area career and technical education school" be included in the final definitions.

*Discussion:* These are definitions that are included in the Workforce Innovation and Opportunity Act (WIOA) for programs authorized by that statute, and therefore would not need to be included within these priorities.

*Changes:* None.

*Comments:* One commenter recommended definitions for "learning model" and "whole-learner approaches."

*Discussion:* We appreciate the recommendations from the commenter and note that these terms are not used within the priorities and therefore do not need to be defined.

*Changes:* None.

*Comments:* One commenter asked the Department to add the following language to the definition of children or students with disabilities: "And which includes children or students with the most significant cognitive disabilities" to explicitly identify this subgroup of students with disabilities.

*Discussion:* We appreciate the commenters' focus on children or students with the most significant

cognitive disabilities. However, we are not changing the definitions used in this NFP because they are the definitions of a "child with a disability" and "student with a disability" in section 602(3) of IDEA and its implementing regulations at 34 CFR 300.8 and section 7(37) of the Rehabilitation Act of 1973 and 34 CFR 361.5(c)(51) of the Vocational Rehabilitation program regulations, respectively.

*Changes:* None.

*Comments:* One commenter encouraged the Department to expand the definition of "competency-based education" by incorporating seven components that are student focused.

*Discussion:* The definition of competency-based education as currently written is in alignment with other Department rules, and as such, we are not making any changes to the definition.

*Changes:* None.

*Comments:* Instead of just early learning, one commenter recommended defining "high quality early learning."

*Discussion:* The current definition of "early learning" includes a variety of early learning settings, and the quality piece of the early learning is established by the regulator for the early learning program.

*Changes:* None.

*Comments:* One commenter suggested using, as a definition, the term "Emergent Bilingual or Multilingual Learner" instead of "English Learner" to emphasize language as a valuable skill rather than a limit.

*Discussion:* The Department wholeheartedly agrees with an asset-minded approach to language learners and will adopt such an approach where appropriate and when concepts are not tied to a specific term in a governing statute or regulation. The term English learner is defined in both the ESEA and the WIOA, which govern many of our grant programs. Therefore, we did not make changes to the definition of English learner.

*Changes:* None.

*Comments:* One commenter had strong support for the definition of "evidence-based."

*Discussion:* We appreciate the support for the definition and think that it will ensure clarity in the use of the priorities.

*Changes:* None.

*Comments:* One commenter expressed support for a definition of the term "high-quality assessment."

*Discussion:* We appreciate the support for the definition and think that it will ensure clarity in the use of the priorities.

*Changes:* None.

*Comments:* One commenter recommended edits to the definition of “high-quality assessment” so that assessments are part of a comprehensive assessment plan.

*Discussion:* We appreciate the commenter’s suggestions and agree that a comprehensive assessment plan benefits students by adding more clarity around the expectation of high-quality assessment systems. For this reason, we have modified the definition to broaden the scope of high-quality assessment.

*Changes:* We are making edits to the definition of high-quality assessment to include “interim” as part of the assessments, and that policymakers support students at the student, classroom, school, and system levels.

*Comments:* One commenter recommended adding the term “interim” to the list of high-quality assessments to ensure the definition is comprehensive and properly represents the field. The commenter highlighted that interim assessments can measure growth and provide information throughout a school year and that interim assessment results are comparable across classrooms and schools, so they can help districts and State leaders direct resources to where they are needed most. This same commenter recommended adding language to the definition describing the importance of the purpose when defining the assessment and how the assessment will be used.

*Discussion:* We thank the commenters for the suggestions and appreciate the recommendations and will include “interim” in the definition, in addition to “formative”, as they serve distinct purposes. Regarding the important use of the data from the assessments, we agree that there is a broader use that goes beyond the school and community. For this reason, we have modified the definition to strengthen the definition of high-quality assessment.

*Changes:* We have revised the definition for high-quality assessments by adding interim assessments to not only help parents, educators and caregivers, but to also help policymakers support students at the student, classroom, school and system levels.

*Comments:* One commenter appreciated the inclusion of children and students with disabilities in the definition of underserved student. Another commenter expressed support for this definition, in particular the focus on student caregivers. One commenter supported the specificity of the definition to help States and communities to be explicit about what equitable education systems include

and how they serve students from the lived experiences described in the priority. The commenter noted the inclusion of adults and student parents, and “a student performing significantly below grade level(s),” stating that inclusion of the latter acknowledges the role and responsibility of the system. One commenter appreciated the expansive and inclusive definition of underserved student. One commenter strongly supported the Department’s inclusion of (LGBTQI+) students; students of color; students who are members of Tribal communities; and students with disabilities.

*Discussion:* We thank the commenters for their overall support for the definition and appreciate that the inclusions to the definition are comprehensive and relevant.

*Changes:* None

*Comments:* One commenter asked that military- or veteran-connected students be added to the definition of underserved student.

*Discussion:* We appreciate the commenter’s suggestion. We agree with the recommendation to include the military- and veteran-connected student and had already included it as a separate definition but will also include it within the definition of underserved student as we believe that this is a group of students that has been underserved.

*Changes:* We have added military and veteran connected student to the category list of underserved students.

*Comments:* Three commenters recommended that the Department add students residing in Puerto Rico as additional definitions to the list.

*Discussion:* We do not believe it is appropriate to target any particular State or territory as funding from the Department’s discretionary grant programs may generally be used within any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Outlying Areas, and the tribal nations. We appreciate the second comment on adding a proposed subpart, and we agree that proximate involvement will help to identify community needs. We appreciate the commenter’s desire to include language specific to Puerto Rico.

*Change:* None.

*Comments:* One commenter asked that “questioning” be added to (i) (LGBTQI+) under the definition of underserved student.

*Discussion:* We appreciate the comment and agree that questioning is an important part of the acronym.

*Changes:* We have added “questioning” as a part of the definition of underserved student.

*Comments:* One commenter requested that the Department add unconnected students to the definition of underserved student, which includes students who do not have access to their own individual device or high-quality internet at home.

*Discussion:* We appreciate the commenter’s request and agree that there is a utility in including this group of students in the definition as the pandemic showed that students without access to the internet were unable to participate in learning.

*Changes:* We have updated the definition of “underserved student” to include technologically unconnected youth.

*Comments:* One commenter emphasized the importance of career readiness and encouraging projects focused on post-graduate outcomes and proposed a program that set undergraduates onto a path of strong economic opportunity.

*Discussion:* We agree that college and career readiness is important, and programs should have outcomes that set students onto a path of strong economic opportunity that could be through either a strong first job or matriculation into graduate school. We think that there is a clear emphasis on college and career readiness incorporated into the priorities and we do not reference specific programs within the priorities.

*Changes:* None.

### Final Priorities

The Secretary establishes the following priorities for use in any Department discretionary grant program.

#### Priority 1—Addressing the Impact of COVID-19 on Students, Educators, and Faculty

Projects that are designed to address the impacts of the COVID-19 pandemic, including impacts that extend beyond the duration of the pandemic itself, on the students most impacted by the pandemic, with a focus on underserved students and the educators who serve them, through one or more of the following priority areas:

(a) Conducting community asset-mapping and needs assessments that may include an assessment of the extent to which students, including subgroups of students, have become disengaged from learning, including students not participating in in-person or remote instruction, and specific strategies for reengaging and supporting students and their families.

(b) Providing resources and supports to meet the basic, fundamental, health

and safety needs of students and educators.

(c) Addressing students' social, emotional, mental health, and academic needs through approaches that are inclusive with regard to race, ethnicity, culture, language, and disability status.

(d) Addressing educator, faculty, and staff well-being.

(e) Providing students and educators with access to reliable high-speed broadband and devices; providing students with access to high-quality, technology-supported learning experiences and ensuring these experiences are accessible to, interoperable, and usable by children or students with disabilities,<sup>2</sup> educators with disabilities, and English learners; and providing educators with access to job-embedded, sustained, and collaborative professional development, to support the effective use of technology.

(f) Using technology to enable evidence-based approaches to personalized student learning as well as evidence-based supplemental activities that extend learning time, such as comprehensive afterschool and summer learning and enrichment programs, and increase student and, where appropriate, parent engagement.

(g) Using evidence-based instructional approaches and supports, such as professional development, coaching, ongoing support for educators, high quality tutoring, expanded access to rigorous coursework and content across K–12, and expanded learning time to accelerate learning for students in ways that ensure all students have the opportunity to successfully meet challenging academic content standards without contributing to tracking or remedial courses.

(h) Using evidence-based instructional approaches or supports to assist individuals who did not enroll in, withdrew from, or reduced course loads in postsecondary education or training programs due to COVID–19 to enroll in, remain enrolled in, and complete credit-bearing coursework and earn recognized postsecondary credentials.

#### *Priority 2—Promoting Equity in Student Access to Educational Resources and Opportunities*

Under this priority, an applicant must demonstrate one or both of the following:

(a) The applicant proposes a project designed to promote educational equity

<sup>2</sup> In an NIA, the Department could use either “children with disabilities” or “students with disabilities,” depending on which term is more appropriate for the program. In this document, we use these terms interchangeably.

and adequacy in resources and opportunity for underserved students—

(1) In one or more of the following educational settings:

(i) Early learning programs.

(ii) Elementary school.

(iii) Middle school.

(iv) High school.

(v) Career and technical education programs.

(vi) Out-of-school-time settings.

(vii) Alternative schools and programs.

(viii) Juvenile justice system or correctional facilities.

(ix) Adult learning;

(2) That examines the sources of inequity and inadequacy and implement responses, and that may include one or more of the following:

(i) Rigorous, engaging, and well-rounded (*e.g.*, that include music and the arts) approaches to learning that are inclusive with regard to race, ethnicity, culture, language, and disability status and prepare students for college, career, and civic life, including one or more of the following:

(A) Student-centered learning models that may leverage technology to address learner variability (*e.g.*, universal design for learning (as defined in this notice), K–12 competency-based education (as defined in this notice), project-based learning, or hybrid/blended learning) and provide high-quality learning content, applications, or tools.

(B) Middle school courses or projects that prepare students to participate in advanced coursework in high school.

(C) Advanced courses and programs, including dual enrollment and early college programs.

(D) Project-based and experiential learning, including service and work-based learning.

(E) High-quality career and technical education courses, pathways, and industry-recognized credentials that are integrated into the curriculum.

(F) Science, technology, engineering, and mathematics (STEM), including computer science coursework.

(G) Civics programs that support students in understanding and engaging in American democratic practices.

(ii) Increasing the number and proportion of experienced, fully certified, in-field, and effective educators, and educators from traditionally underrepresented backgrounds or the communities they serve, to ensure that underserved students have educators from those backgrounds and communities and are not taught at disproportionately higher rates by uncertified, out-of-field, and

novice teachers compared to their peers.<sup>3</sup>

(iii) Improving the preparation, recruitment, and early career support and development of educators in shortage areas or hard to staff schools.

(iv) Improving the retention of fully certified, experienced, and effective educators in high-need schools or shortage areas.

(v) Pedagogical practices in educator preparation programs and professional development programs that are inclusive with regard to race, ethnicity, culture, language, and disability status so that educators are better prepared to create inclusive, supportive, equitable, unbiased, and identity-safe learning environments for their students.

(vi) Using technology to enable evidence-based approaches to personalized student learning in the classroom or support supplemental activities that extend learning time and increase student and, where appropriate, parent engagement.

(vii) Creating more equitable and adequate approaches to school funding, by doing one or more of the following:

(A) Aligning funding levels to students' diverse needs; or

(B) Sufficiently accounting for districts' differential access to local revenue given differences in local wealth and income levels.

(viii) Expanding access to high-quality early learning, including in school-based and community-based settings, by removing barriers through implementation of programs that are inclusive with regard to race, ethnicity, culture, language, and disability status.

(ix) Establishing, expanding, or improving learning environments for multilingual learners, and increasing public awareness about the benefits of fluency in more than one language and how the coordination of language development in the school and the home improves student outcomes for multilingual learners.

(x) Establishing, expanding, or improving the engagement of underserved community members (including underserved students and families) in informing and making decisions that influence policy and practice at the school, district, or State level by elevating their voices, through their participation and their perspectives and providing them with access to opportunities for leadership (*e.g.*, establishing partnerships between civic student government programs and parent and caregiver leadership initiatives).

<sup>3</sup> All strategies to increase racial diversity of educators must comply with applicable law, including Title VI of the Civil Rights Act of 1964.

(xi) Improving the quality of educational programs in juvenile justice facilities (such as detention facilities and secure and non-secure placements) or adult correctional facilities.

(xii) Supporting re-entry of, and improving long-term outcomes for, youth and adults after release from juvenile justice system or correctional facilities by linking youth and adults to appropriate support, education, vocational rehabilitation, or workforce training programs.

(xiii) Increasing student racial or socioeconomic diversity, through one or more of the following:

(A) Using high-quality data collection methods to identify racial and socioeconomic stratification, trends in and contributors to stratification, and barriers to racial, ethnic, and socioeconomic diversity.

(B) Developing or implementing evidence-based policies or strategies that include one or more of the following:

(1) Ongoing, robust family and community involvement.

(2) Intra- or inter-district or regional coordination.

(3) Cross-agency collaboration, such as with housing or transportation authorities.

(4) Alignment with an existing public diversity plan that is evidence-based and designed to effectively promote diversity.

(5) School assignment or admissions policies that are designed to promote socioeconomic diversity and provide equitable access to educational opportunities for students from low-income backgrounds or students residing in neighborhoods experiencing concentrated poverty.

(C) Establishing or expanding schools, or programs within schools, that are designed to attract, and foster meaningful interactions among, substantial numbers of students from different racial and/or socioeconomic backgrounds, such as magnet schools.

(D) Developing evidence related to, or providing technical assistance on, evidence-based policies or strategies designed to increase inclusivity with regard to race, ethnicity, culture, language, and disability status.

(b) The project will be implemented by or in partnership with one or more of the following entities:

(1) Community colleges (as defined in this notice).

(2) Historically Black colleges and universities (as defined in this notice).

(3) Tribal Colleges and Universities (as defined in this notice).

(4) Minority-serving institutions (as defined in this notice).

(5) Career and technical education centers.

(6) Adult education.

*Priority 3—Supporting a Diverse Educator Workforce and Professional Growth To Strengthen Student Learning*

Projects that are designed to increase the proportion of well-prepared, diverse, and effective educators serving students, with a focus on underserved students, through one or more of the following priority areas:

(a) Increasing the number of diverse educator candidates who have access to an evidence-based comprehensive educator preparation program.

(b) Increasing the number of teachers with certification or dual certification in a shortage area, or advanced certifications from nationally recognized professional organizations.

(c) Identifying and addressing disparities among educator subgroups in graduation rates, passage rates for certification and licensure exams, successful employment, retention, and professional growth.

(d) Promoting knowledge of universal design for learning in educator preparation.

(e) Integrating universal design for learning principles in pedagogical practices and classroom features, such as instructional techniques, classroom materials and resources, and classroom seating.

(f) Implementing or expanding loan forgiveness or service-scholarship programs for educators based on completing service obligation requirements.

(g) Building or expanding high-poverty school (as may be defined in the program statute or regulations) districts' capacity to hire, support, and retain an effective and diverse educator workforce, through one or more of the following:

(1) Providing beginning educators with evidence-based mentoring or induction programs.

(2) Adopting or expanding comprehensive, strategic career and compensation systems that provide competitive compensation and include opportunities for educators to serve as mentors and instructional coaches, or to take on additional leadership roles and responsibilities for which educators are compensated.

(3) Developing data systems, timelines, and action plans for promoting inclusive and bias-free human resources practices that promote and support development of educator diversity.

(4) Providing opportunities for educators to be involved in the design

and implementation of local and district wide initiatives that advance systemic changes.

(h) Supporting effective instruction and building educator capacity through one or more of the following:

(1) Providing high-quality job-embedded professional development opportunities focused on one or more of the following:

(i) Designing and delivering instruction in ways that are engaging, effectively integrate technology, and provide students with opportunities to think critically and solve complex problems, apply their learning in authentic and real-world settings, communicate and collaborate effectively, and develop academic mindsets, including through project-based, work-based, or other experiential learning opportunities.

(ii) Supporting students and their families at key transitional stages in their education as they enter into one or more of the following:

(A) Early learning programs.

(B) Elementary school.

(C) Middle school.

(D) High school.

(E) Postsecondary education.

(F) Career and technical education.

(G) Work.

(iii) Meeting the needs of English learners.

(iv) Meeting the needs of children or students with disabilities, including children or students with the most significant cognitive disabilities.

(v) Addressing inequities and developing and implementing pedagogical practices that are inclusive with regard to race, ethnicity, culture, language, and disability status.

(vi) Building meaningful and trusting relationships with students' families to support in-home, community-based, and in-school learning.

(vii) For school leaders, improving mastery of essential instructional and organizational leadership skills designed to improve teacher and student learning.

(viii) Supporting teachers in creating safe, healthy, inclusive, and productive classroom environments.

(2) Developing and implementing high-quality assessments (as defined in this notice) of student learning (for example, curriculum-aligned and performance-based tools aligned with State grade-level content standards or, for career and technical education, relevant industry standards) and strategies that allow educators to use the data from assessments to inform instructional design and classroom practices that meet the needs of all students and providing high-quality



professional development to support educators in implementing these strategies.

(i) Increasing educator capacity to collaborate with diverse stakeholders to carry out rapid cycle evaluation, design-based research, improvement science, or other rapid cycle techniques to design, develop, or improve promising innovations that are designed to benefit underserved students.

*Priority 4—Meeting Student Social, Emotional, and Academic Needs*

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through one or more of the following priority areas:

(a) Developing and supporting educator and school capacity to support social and emotional learning and development that—

(1) Fosters skills and behaviors that enable academic progress;

(2) Identifies and addresses conditions in the learning environment, that may negatively impact social and emotional well-being for underserved students, including conditions that affect physical safety; and

(3) Is trauma-informed, such as addressing exposure to community-based violence and trauma specific to military- or veteran-connected students (as defined in this notice).

(b) Creating education or work-based settings that are supportive, positive, identity-safe and inclusive with regard to race, ethnicity, culture, language, and disability status, through one or more of the following activities:

(1) Developing trusting relationships between students (including underserved students), educators, families, and community partners.

(2) Providing high-quality professional development opportunities designed to increase engagement and belonging and build asset-based mindsets for educators working in and throughout schools.

(3) Engaging students (including underserved students), educators, families, and community partners from diverse backgrounds and representative of the community as partners in school climate review and improvement efforts.

(4) Developing and implementing inclusive and culturally informed discipline policies and addressing disparities in school discipline policy by identifying and addressing the root causes of those disparities, including by involving educators, students, and families in decision-making about discipline procedures and providing training and resources to educators.

(5) Supporting students to engage in real-world, hands-on learning that is aligned with classroom instruction and takes place in community-based settings, such as apprenticeships, pre-apprenticeships, work-based learning, and service learning, and in civic activities, that allow students to apply their knowledge and skills, strengthen their employability skills, and access career exploration opportunities.

(c) Creating a positive, inclusive, and identity-safe climate at institutions of higher education through one or more of the following activities:

(1) Fostering a sense of belonging and inclusion for underserved students.

(2) Implementing evidence-based practices for advancing student success for underserved students.

(3) Providing evidence-based professional development opportunities designed to build asset-based mindsets for faculty and staff on campus and that are inclusive with regard to race, ethnicity, culture, language, and disability status.

(4) Updating the institution's harassment policies and procedures consistent with applicable Federal law to ensure they apply to harassment that occurs in the institution's educational programs and activities, including during hybrid and distance education.

(d) Providing multi-tiered systems of supports that address learning barriers both in and out of the classroom, that enable healthy development and respond to students' needs and which may include evidence-based trauma-informed practices and professional development for educators on avoiding deficit-based approaches.

(e) Developing or implementing policies and practices, consistent with applicable Federal law, that prevent or reduce significant disproportionality on the basis of race or ethnicity with respect to the identification, placement, and disciplining of children or students with disabilities.

(f) Providing all students access to physically healthy learning environments, such as energy-efficient spaces, for one or more of the following:

(1) Early learning environments.

(2) Elementary or secondary schools.

(3) Out-of-school time learning

spaces.

(4) Postsecondary institutions.

(5) Career and technical education.

(6) Adult education learning

environments.

(g) Providing students equitable access that is inclusive, with regard to race, LGBTQI+, ethnicity, culture, language, and disability status, to social workers, psychologists, counselors, nurses, or mental health professionals

and other integrated services and supports, which may include in early learning environments.

(h) Preparing educators to implement project-based or experiential learning opportunities for students to strengthen their metacognitive skills, self-direction, self-efficacy, competency, or motivation, including through instruction that: Connects to students' prior knowledge and experience; provides rich, engaging, complex, and motivating tasks; and offers opportunities for collaborative learning.

(i) Creating and implementing comprehensive schoolwide frameworks (such as small schools or learning communities, advisory systems, or looping educators) that support strong and consistent student and educator relationships.

(j) Fostering partnerships, including across government agencies (e.g., housing, human services, employment agencies), local educational agencies, community-based organizations, adult learning providers, and postsecondary education intuitions, to provide comprehensive services to students and families that support students' social, emotional, mental health, and academic needs, and that are inclusive with regard to race, ethnicity, culture, language, and disability status.

*Priority 5—Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success*

Projects that are designed to increase postsecondary access, affordability, completion, and success for underserved students by addressing one or more of the following priority areas:

(a) Increasing postsecondary education access and reducing the cost of college by creating clearer pathways for students between institutions and making transfer of course credits more seamless and transparent.

(b) Increasing the number and proportion of underserved students who enroll in and complete postsecondary education programs, which may include strategies related to college preparation, awareness, application, selection, advising, counseling, and enrollment.

(c) Reducing the net price or debt-to-earnings ratio for underserved students who enroll in or complete college, other postsecondary education, or career and technical education programs.

(d) Establishing a system of high-quality data collection and analysis, such as data on persistence, retention, completion, and post-college outcomes, for transparency, accountability, and institutional improvement.

(e) Supporting the development and implementation of student success programs that integrate multiple comprehensive and evidence-based services or initiatives, such as academic advising, structured/guided pathways, career services, credit-bearing academic undergraduate courses focused on career, and programs to meet basic needs, such as housing, childcare and transportation, student financial aid, and access to technological devices.

(f) Increasing the number of individuals who return to the educational system and obtain a regular high school diploma, or its recognized equivalent for adult learners; enroll in and complete community college, college, or career and technical training; or obtain basic and academic skills, including English language learning, that they need to succeed in college—including community college—as well as career and technical education and/or the workforce.

(g) Supporting the development and implementation of high-quality and accessible learning opportunities, including learning opportunities that are accelerated or hybrid online; credit-bearing; work-based; and flexible for working students.

(h) Supporting evidence-based practices in career and technical education and ensuring equitable access to and successful completion of high-quality programs, credentials, or degrees.

(i) Supporting the development and implementation of evidence-based strategies to promote students' development of knowledge and skills necessary for success in the workforce and civic life.

(j) Connecting children or students with disabilities, adults with disabilities, and disconnected youth to resources designed to improve independent living and the achievement of employment outcomes or education, which may include the provision of pre-employment transition services, transition and other vocational rehabilitation services under the Vocational Rehabilitation program, and transition and related services under IDEA, as appropriate.

(k) Providing students access to international education, education in cultural and global competencies, and foreign language training in preparation for global competitiveness.

(l) Supporting the development and implementation of comprehensive transition and postsecondary programs for students with intellectual disabilities (as defined in section 760 of the Higher Education Act of 1965, as amended (HEA)).

(m) Providing secondary school students with access to career exploration and advising opportunities to help students make informed decisions about their postsecondary enrollment decisions and to place them on a career path.

*Priority 6—Strengthening Cross-Agency Coordination and Community Engagement To Advance Systemic Change*

Projects that are designed to take a systemic evidence-based approach to improving outcomes for underserved students in one or more of the following priority areas:

(a) Coordinating efforts with Federal, State, or local agencies, or community-based organizations, that support students, to address one or more of the following:

- (1) Food assistance.
- (2) Energy.
- (3) Climate change.
- (4) Housing.
- (5) Homelessness.
- (6) Transportation.
- (7) Health, including physical health, mental health, and behavioral health and trauma.
- (8) Child care.
- (9) School diversity, including student and educator diversity.
- (10) Justice policy.
- (11) College readiness.
- (12) Workforce development.
- (13) Civic engagement.
- (14) Technology.
- (15) Public safety.
- (16) Community violence prevention and intervention.
- (17) Social services.
- (18) Voting access and registration.
- (19) Adult education and literacy.
- (20) Another key field-initiated focus area.

(b) Conducting community needs and asset mapping to identify existing programs and initiatives that can be leveraged, and new programs and initiatives that need to be developed and implemented, to advance systemic change.

(c) Establishing cross-agency partnerships, or community-based partnerships with local nonprofit organizations, businesses, philanthropic organizations, or others, to meet family well-being needs.

(d) Identifying, documenting, and disseminating policies, strategies, and best practices on effective approaches to creating systemic change through cross-agency or community-based coordination and collaboration.

(e) Expanding or improving parent and family engagement.

*Types of Priorities:*

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

**Final Definitions**

The Secretary establishes the following definitions for use in any Department discretionary grant program in which the final priorities are used. In any discretionary grant program competition in which the definition of “underserved students” is used, the Secretary may use the entire definition or one or more of the subparts of the definition that are most relevant for the grant program competition.

*Children or students with disabilities* means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202) (B)).

*Community college* means “junior or community college” as defined in section 312(f) of the Higher Education Act of 1965, as amended (HEA).

*Competency-based education* (also called proficiency-based or mastery-based learning) means learning based on knowledge and skills that are transparent and measurable. Progression is based on demonstrated mastery of what students are expected to know (knowledge) and be able to do (skills), rather than seat time or age.

*Disconnected youth* means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not

enrolled in (or at risk of dropping out of) an educational institution.

*Early learning* means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home; (b) program funded by the Federal Government or State or local educational agencies (including any IDEA-funded program); (c) Early Head Start and Head Start program; (d) non-relative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting; and (e) other program that may deliver early learning and development services in a child's home, such as the Maternal, Infant, and Early Childhood Home Visiting Program; Early Head Start; and Part C of IDEA.

*Educator* means an individual who is an early learning educator, teacher, principal or other school leader, specialized instructional support personnel (e.g., school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

*English learner* means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

*Evidence-based* has the meaning ascribed to it in 34 CFR 77.1 or the ESEA, as applicable.

*High-quality assessments* mean diagnostic, formative, interim, or summative assessments that are valid and reliable for the purposes for which they are used and that provide relevant and timely information to help educators, parents or caregivers, and policymakers support students at the student, classroom, school, and system levels.

*Historically Black colleges and universities* means colleges and universities that meet the criteria set out in 34 CFR 608.2.

*Military- or veteran-connected student* means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast

Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

*Minority-serving institution* means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

*Tribal College or University* has the meaning ascribed it in section 316(b)(3) of the HEA.

*Underserved student* means a student (which may include children in early learning environments, students in K–12 programs, students in postsecondary education or career and technical education, and adult learners, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A technologically unconnected youth.

(h) A migrant student.

(i) A student experiencing homelessness or housing insecurity.

(j) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(k) A student who is in foster care.

(l) A student without documentation of immigration status.

(m) A pregnant, parenting, or caregiving student.

(n) A student impacted by the justice system, including a formerly incarcerated student.

(o) A student who is the first in their family to attend postsecondary education.

(p) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(q) A student who is working full-time while enrolled in postsecondary education.

(r) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(s) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

(t) A student performing significantly below grade level.

(u) A military- or veteran- connected student.

*Universal design for learning* has the meaning ascribed it in section 103(24) of the HEA.

## Executive Orders 12866 and 13563

### Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing

that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these final priorities and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that these final priorities and definitions are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for

administering the Department’s programs and activities.

#### Potential Costs and Benefits

The final priorities and definitions will impose minimal costs on entities that receive assistance through the Department’s discretionary grant programs. Additionally, the benefits of implementing the final priorities and definitions outweigh any associated costs because it will result in the Department’s discretionary grant programs encouraging the submission of a greater number of high-quality applications and supporting activities that reflect the Administration’s educational priorities.

Application submission and participation in a discretionary grant program are voluntary. The Secretary believes that the costs imposed on applicants by the final priorities and definitions will be limited to paperwork burden related to preparing an application for a discretionary grant program that is using a priority in its competition. Because the costs of carrying out activities will be paid for with program funds, the costs of implementation will not be a burden for any eligible applicants, including small entities.

#### Regulatory Flexibility Act Certification

The Secretary certifies that this final regulatory action will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this final regulatory action will affect are early learning providers, school districts, institutions of higher education, nonprofit organizations, and for-profit organizations. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and submitted annually for competitive grant

competitions. Therefore, we do not believe that the final priorities and definitions will significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

#### Paperwork Reduction Act

The final priorities and definitions do not contain any information collection requirements.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Miguel A. Cardona,**

*Secretary of Education.*

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Part III

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10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for VRF Multi-Split Systems;  
Proposed Rule

**DEPARTMENT OF ENERGY****10 CFR Parts 429 and 431****[EERE–2021–BT–TP–0019]****RIN 1904–AE43****Energy Conservation Program: Test Procedure for VRF Multi-Split Systems****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The U.S. Department of Energy (“DOE”) proposes to amend the test procedure for variable refrigerant flow multi-split air conditioners and heat pumps (“VRF multi-split systems”) to incorporate by reference the latest version of the industry test standard. DOE also proposes to adopt the integrated energy efficiency ratio metric in its test procedures for VRF multi-split systems. Additionally, DOE proposes to adopt provisions in the updated industry test procedure relevant to certification and enforcement, including a controls verification procedure. DOE welcomes written comment from the public on any subject within the scope of this document (including topics not specifically raised in this proposal), as well as the submission of data and other relevant information.

**DATES:**

*Comments:* DOE will accept written comments, data, and information regarding this notice of proposed rulemaking (NOPR) on or before February 8, 2022. See section V, “Public Participation,” for details.

*Meeting:* DOE will hold a webinar on Thursday, January 20, 2022, from 1:00 p.m. to 4:00 p.m. See section V, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–TP–0019, by any of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov).

2. *Email:* to [VRFMultisplitACHP2021TP0019@ee.doe.gov](mailto:VRFMultisplitACHP2021TP0019@ee.doe.gov). Include docket number EERE–2021–BT–TP–0019 in the subject line of the message. No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments

and additional information on this process, see section V of this document “Public Participation.”

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including the Federal eRulemaking Portal, email, postal mail or hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing corona virus 2019 (COVID–19) pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

*Docket:* The docket, which includes **Federal Register** notices, public meeting/webinar attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://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.

The docket web page can be found at: [www.regulations.gov/docket/EERE-2021-BT-TP-0019](http://www.regulations.gov/docket/EERE-2021-BT-TP-0019). The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V “Public Participation” for information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–5827. Email: [Eric.Stas@hq.doe.gov](mailto:Eric.Stas@hq.doe.gov).

DOE has submitted the collection of information contained in the proposed rule to OMB for review under the Paperwork Reduction Act, as amended. (44 U.S.C. 3507(d)) Comments on the

information collection proposal shall be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Sofie Miller, OIRA Desk Officer by email: [sofie.e.miller@omb.eop.gov](mailto:sofie.e.miller@omb.eop.gov).

For further information on how to submit a comment, review other public comments and the docket, or participate in the webinar, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

**SUPPLEMENTARY INFORMATION:** DOE

proposes to maintain and update previously approved incorporations by reference and incorporate by reference the following industry standard into parts 429 and 431:

AHRI Standard 1230, (“AHRI 1230–2021”), “Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment;” approved 2021.

ANSI/AHRI 1230–2010, 2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment;” approved August 2, 2010 and updated by addendum 1 in March 2011, (AHRI 1230–2010).

Copies of AHRI 1230–2021 and AHRI 1230–2010 can be obtained from the Air-Conditioning, Heating, and Refrigeration Institute, 2311 Wilson Blvd., Suite 400, Arlington, VA 22201 (703) 524–8800, or online at: [www.ahrinet.org/search-standards.aspx](http://www.ahrinet.org/search-standards.aspx).

DOE proposes to amend the previously approved incorporation by reference for the following industry standard in part 431:

ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 37–2009, “Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment;” ASHRAE approved June 24, 2009.

Copies of ANSI/ASHRAE 37–2009 can be obtained from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4800, or online at: [webstore.ansi.org/](http://webstore.ansi.org/).

See section IV.M of this document for a further discussion of these standards.

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### I. Authority and Background

Commercial package air conditioning and heating equipment is included in the list of “covered equipment” for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B) through (D)) Commercial package air conditioning and heating equipment includes variable refrigerant flow multi-split air conditioners and heat pumps (“VRF multi-split systems”). DOE’s energy conservation standards and test procedure for VRF multi-split systems are currently prescribed at 10 CFR 431.97 and 10 CFR 431.96, respectively. The following sections discuss DOE’s authority to establish the test procedure for VRF multi-split systems and relevant background information regarding DOE’s consideration of the test procedure for this equipment.

#### A. Authority

The Energy Policy and Conservation Act, as amended (“EPCA”),<sup>1</sup> 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 C<sup>2</sup> of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes small, large, and very large commercial package air conditioning and heating equipment, which includes VRF multi-split systems, the subject of this NOPR. (42 U.S.C. 6311(1)(B)–(D))

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 include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that

manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular state laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a given type of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

With respect to VRF multi-split systems, EPCA requires that the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) or the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (“ASHRAE”), as referenced in ASHRAE/IES Standard 90.1, “Energy Standard for Buildings Except Low-Rise Residential Buildings” (“ASHRAE Standard 90.1”). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure unless it determines, by a rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, and estimated operating costs of that equipment during a representative average use cycle. (42 U.S.C. 6314(a)(4)(B))

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including VRF multi-split systems, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C 6314(a)(1))

In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register**, and afford interested persons an opportunity (of not less than 45 days duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

DOE is proposing amendments to the test procedures for VRF multi-split systems in satisfaction of its statutory obligations under EPCA.

**B. Background**

DOE’s existing test procedure for VRF multi-split systems appears at 10 CFR 431.96 (“Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps”). The Federal test procedure for

VRF multi-split systems was last amended in a final rule for standards and test procedures for certain commercial heating, air conditioning, and water heating equipment published on May 16, 2012 (“May 2012 Final Rule”). 77 FR 28928. With regard to VRF multi-split systems, the May 2012 Final Rule adopted the test procedure American National Standards Institute (“ANSI”)/AHRI Standard 1230–2010 “2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,” approved August 2, 2010 and updated by Addendum 1 in March 2011 (“ANSI/AHRI 1230–2010”). 77 FR 28928, 28945–28946; see 10 CFR 431.96, Table 1. Specifically, the DOE test procedure for VRF multi-split systems was modified to reference ANSI/AHRI 1230–2010 with Addendum 1, but omitting sections 5.1.2 and 6.6. 77 FR 28928, 28990–28991. The May 2012 Final Rule also adopted additional requirements, listed in 10 CFR 431.96(c)–(f), for measuring the energy efficiency ratio (“EER”) and coefficient of performance (“COP”) for air-cooled VRF multi-split systems with a cooling capacity between 65,000 Btu/h and 760,000 Btu/h and water-source VRF multi-split systems with a cooling capacity less than 760,000 Btu/h. *Id.* These additional requirements specify provisions for equipment set-up and provide for limited involvement of manufacturer representatives during testing. 77 FR 28928, 28991.

In 2016,<sup>3</sup> ASHRAE Standard 90.1 was updated, but the 2016 update did not

make changes to the test procedure references in ASHRAE Standard 90.1–2013 for VRF multi-split systems. On July 25, 2017, DOE published a request for information (“RFI”) (“July 2017 ASHRAE TP RFI”) to collect information and data to consider amendments to DOE’s test procedures for commercial package air conditioning and heating equipment with the test procedure updates included in ASHRAE Standard 90.1–2016. 82 FR 34427. As part of the July 2017 ASHRAE TP RFI DOE requested comment on the VRF multi-split systems test procedure, under the 7-year lookback requirement. 82 FR 34427, 34429. DOE identified several issues that might have warranted modifications to the applicable VRF multi-split systems test procedure, in particular concerning incorporation by reference of the most recent version of the relevant industry standard(s); efficiency metrics and calculations; and clarification of test methods. 82 FR 34427, 34427.

DOE received a number of comments regarding VRF multi-split systems from interested parties in response to the July 2017 ASHRAE TP RFI, which covered multiple categories of equipment. Table I–1 lists the commenters that provided comments relevant to VRF multi-split systems, along with each commenter’s abbreviated name used throughout this NOPR. Discussion of the relevant comments, and DOE’s responses, are provided in the appropriate sections of this document.

TABLE I–1—INTERESTED PARTIES PROVIDING COMMENT ON VRF MULTI-SPLIT SYSTEMS IN RESPONSE TO THE JULY 2017 ASHRAE TP RFI

Name	Abbreviation	Type
Air-Conditioning, Heating, and Refrigeration Institute .....	AHRI .....	IR.
Appliance Standards Awareness Project, Alliance to Save Energy, American Council for an Energy-Efficient Economy, Northwest Energy Efficiency Alliance, and Northwest Power and Conservation Council.	Joint Advocates .....	EA.
Carrier Corporation, part of United Technologies Climate, Controls & Security Business .....	Carrier .....	M.
Goodman Global, Inc .....	Goodman .....	M.
Trane Technologies .....	Trane .....	M.
Lennox International Inc .....	Lennox .....	M.
Mitsubishi Electric Cooling & Heating, a division of Mitsubishi Electric US, Inc .....	Mitsubishi .....	M.
National Comfort Institute .....	NCI .....	IR.
Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (collectively, California Investor-Owned Utilities).	CA IOUs .....	U.

EA: Efficiency/Environmental Advocate; IR: Industry Representative; M: Manufacturer; U: Utility.

<sup>3</sup> No publication date is printed on ASHRAE Standard 90.1–2016, but ASHRAE issued a press

release on October 26, 2016, which is available at [www.ashrae.org/news/2016/ashrae-ies-publish-](http://www.ashrae.org/news/2016/ashrae-ies-publish-)

[2016-energy-efficiency-standard](http://www.ashrae.org/news/2016/ashrae-ies-publish-2016-energy-efficiency-standard). Last accessed April 30, 2021.



A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.<sup>4</sup>

In September 2017, AHRI published an update to ANSI/AHRI 1230, *i.e.*, ANSI/AHRI 1230–2014 with Addendum 1 (although published in 2017, the update uses a 2014 designation).

On April 11, 2018, DOE published in the **Federal Register** a notice of its intent to establish a negotiated rulemaking working group (“Working Group”) under the Appliance Standards and Rulemaking Federal Advisory Committee (“ASRAC”), in accordance with the Federal Advisory Committee Act<sup>5</sup> and the Negotiated Rulemaking Act,<sup>6</sup> to negotiate the proposed test procedure and amended energy conservation standards for VRF multi-split systems. 83 FR 15514. The purpose of the Working Group was to discuss and, if possible, reach consensus on a proposed rule regarding the test procedure and energy conservation standards for VRF multi-split systems, as authorized by EPCA. *Id.* at 83 FR 15514.

The Working Group comprised 21 voting members including manufacturers, energy efficiency advocates, utilities, and trade organizations.<sup>7</sup> On October 1, 2019, the Working Group reached consensus on a term sheet (“VRF TP Term Sheet”) that includes the following recommendations, which highlight the most substantial changes: (Docket No. EERE–2018–BT–STD–0003–0044)

1. VRF multi-split systems should be rated with the Integrated Energy Efficiency Ratio (“IEER”) metric to allow consumers to make consistent comparisons with rooftop air conditioner ratings.

2. The amended test procedure should not be required until the compliance date of amended energy conservation standards.

3. The Federal test procedure for VRF multi-split systems should be consistent with the September 20, 2019 draft version of AHRI 1230, with additional amendments to be implemented after the conclusion of ASRAC negotiations.

(*Id.* at pp. 1, 3)

The additional recommended amendments are discussed further in section III of this NOPR.

On May 18, 2021, AHRI published an updated industry standard for VRF multi-split systems AHRI Standard 1230, “2021 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment” (“AHRI Standard 1230–2021”), which in turn references ANSI/ASHRAE Standard 37–2009 (including Errata Sheet issued October 3, 2016) “*Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment*” (“ANSI/ASHRAE 37–2009”) for additional test setup and methodology specifications. AHRI standard 1230–2021 is discussed in further detail in section III.D.1 of this NOPR.

**II. Synopsis of the Notice of Proposed Rulemaking**

In this NOPR, DOE proposes to update § 431.96, “Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,” to align the relevant references to the most recent version of the industry test procedure as follows: (1) Incorporate by reference AHRI 1230–2021 and ANSI/ASHRAE 37–2009 (including Errata Sheet issued October 3, 2016); and (2) establish provisions for determining

IEER for VRF multi-split systems. DOE further proposes to add new appendices D and D1 to subpart F of part 431, both entitled “Uniform test method for measuring the energy consumption of variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 Btu/h),” (“appendix D” and “appendix D1”, respectively). The current DOE test procedure for VRF multi-split systems would be relocated to appendix D without change, and the new test procedure adopting AHRI 1230–2021 would be established in appendix D1 for determining IEER. Compliance with appendix D1 would not be required until such time as compliance is required with amended energy conservation standards for VRF multi-split systems that rely on IEER, should DOE adopt such standards.

In this NOPR, DOE also proposes to update its certification, compliance, and enforcement (“CCE”) provisions for VRF multi-split systems, to provide information that is necessary for testing VRF multi-split systems consistent with the updated industry test procedure AHRI 1230–2021. Most significantly, these proposed changes include the incorporation of the controls verification procedure (“CVP”) from AHRI 1230–2021 into DOE’s product-specific enforcement provisions at 10 CFR 429.134, as well as accompanying certification requirements at 10 CFR 429.43. DOE is also proposing to amend the sampling size requirements for enforcement from a maximum sample size of not more than four units to require testing of two units.

DOE’s proposed actions are summarized in Table II–1 and addressed in detail in section III of this document.

TABLE II–1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
Incorporates by reference ANSI/AHRI 1230–2010.	Incorporates by reference in a new Appendix D1 AHRI 1230–2021 and ANSI/ASHRAE 37–2009 (including Errata Sheet issued October 3, 2016).	Updates to the applicable industry test procedures.
Includes provisions for determining EER.	Includes provisions for determining both EER and IEER .....	Updates to the applicable industry test procedures.
Does not include VRF-specific provisions for determination of represented values in 10 CFR 429.43.	Includes provisions in 10 CFR 429.43 specific to VRF multi-split systems to determine represented values for units approved for use with multiple refrigerants, and determine represented values for different indoor unit combinations.	Establish VRF-specific provision for determination of represented values.

<sup>4</sup> The parenthetical reference provides a reference for information located in a docket related to DOE’s rulemaking to develop test procedure for VRF multi-split systems. As noted, the July 2017 ASHRAE TP RFI addressed multiple different equipment categories and is available under docket number EERE–2017–BT–TP–0018. As this NOPR

addresses only VRF multi-split systems, it has been assigned a separate docket number *i.e.*, EERE–2021–BT–TP–0019). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

<sup>5</sup> 5 U.S.C. App. 2, Public Law 92–463.

<sup>6</sup> 5 U.S.C. 561–570, Public Law 104–320.

<sup>7</sup> A complete list of the ASRAC VRF Working Group members is available at: [www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee#Variable%20Refrigerant%20Flow%20Multi-Split%20Air%20Conditioners%20and%20Heat%20Pumps%20Working%20Group](http://www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee#Variable%20Refrigerant%20Flow%20Multi-Split%20Air%20Conditioners%20and%20Heat%20Pumps%20Working%20Group).

TABLE II-1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE—  
Continued

Current DOE test procedure	Proposed test procedure	Attribution
Includes certification requirements in 10 CFR 429.43 consistent with testing to EER per AHRI 1230–2010.	Adopts reporting requirements consistent with new test requirements of AHRI 1230–2021, including tested combination, certified critical parameter values, and instructions for conducting the controls verification procedure (“CVP”).	Establish reporting requirements consistent with updated industry test method.
Does not include VRF-specific enforcement provisions in 10 CFR 429.134.	Adopts product-specific enforcement provisions for VRF multi-split systems including: Verification of cooling capacity, configuration of unit under test, manufacturer involvement in assessment or enforcement testing, provisions for when DOE would conduct a CVP, and how CVP results would affect critical parameters used in IEER enforcement testing by DOE.	Establish provisions for DOE testing of VRF multi-split systems.
Does not provide VRF-specific instruction for validating alternative methods for determining energy efficiency and energy use (“AEDM”) at 10 CFR 429.70.	Specifies VRF-specific AEDM validation criteria that are dependent on indoor unit combinations offered by the manufacturer.	Establish AEDM instructions specific to VRF multi-split systems.
Requires selection of not more than 4 samples for DOE enforcement testing following the sampling plan in 10 CFR 429.110.	Specifies an enforcement testing sample size of 2 units, with compliance based on the arithmetic mean of the sample.	Establish VRF-specific provision for enforcement sampling plan.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR regarding the establishment of appendix D would not alter the measured efficiency of VRF multi-split systems, or require retesting solely as a result of DOE’s adoption of the proposed amendments to the test procedure, if made final. DOE has tentatively determined that the proposed amendments regarding the test procedure in proposed appendix D1 would alter measured efficiency if made final and that such amendments are consistent with the updated industry test procedure. Further, use of the updated industry test procedure provisions as proposed and the proposed amendments to representation requirements in 10 CFR 429.43 and 10 CFR 429.70 would not be required until the compliance date of amended standards in terms of IEER. Additionally, DOE has tentatively determined that the proposed amendments, if made final, would not increase the cost of testing relative to the updated industry test procedure. Discussion of DOE’s proposed actions are addressed in detail in section III of this NOPR.

### III. Discussion

DOE’s test procedure for VRF multi-split systems is set forth at § 431.96. DOE’s current regulations require that manufacturers test VRF multi-split systems using ANSI/AHRI 1230–2010 with Addendum 1, except for Sections 5.1.2 and 6.6. See Table 1 at 10 CFR 431.96. DOE’s current test procedure also requires that manufacturers adhere to certain additional requirements listed in 10 CFR 431.96(c) through (f), which

specify additional provisions for equipment set-up and provide for limited involvement of manufacturer representatives during testing.

In the following sections, DOE discusses in detail relevant test procedure issues and proposes changes to the current DOE test procedure for VRF multi-split systems. DOE is generally proposing amendments such that the Federal test procedure is consistent with AHRI 1230–2021 and changes to the current certification, compliance and enforcement (“CCE”) regulations for VRF multi-split systems, also consistent with the updated industry test standard.

#### A. Scope of Applicability

This rulemaking applies to variable refrigerant flow multi-split air conditioners and heat pumps. DOE defines variable refrigerant flow multi-split air conditioners and heat pumps as units of commercial package air conditioning and heating equipment that are configured as a split system air conditioner or heat pump incorporating a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by an integral control device and common communications network and which can operate independently in response to multiple indoor thermostats. 10 CFR 431.92. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping. 10 CFR 431.92. VRF multi-split

heat pumps use reverse cycle refrigeration as its primary heating source and may include second supplemental heating by means of electrical resistance, steam, hot water, or gas. *Id.*

DOE is not proposing to amend the current scope of the Federal test procedure for VRF multi-split systems. DOE’s test procedure regulations for commercial air conditioners and heat pumps at 10 CFR 431.96 include test procedures that apply to air-cooled VRF multi-split air conditioners, air-cooled VRF multi-split heat pumps, and water-source VRF multi-split heat pumps,<sup>8</sup> all with cooling capacity less than 760,000 Btu/h. Table 1 of 10 CFR 431.96. Single-phase, air-cooled VRF multi-split air conditioners and heat pumps with cooling capacity less than 65,000 Btu/h are subject to DOE’s consumer product regulations for central air conditioners, and test procedures for these products are specified in appendices M and M1 to subpart B of 10 CFR part 430. Test procedures for three-phase, air-cooled VRF multi-split systems with cooling capacity less than 65,000 Btu/h are not addressed in this NOPR and will instead be addressed in a separate test procedure rulemaking for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h.

#### B. General Comments

In response to the July 2017 ASHRAE TP RFI, DOE received several general

<sup>8</sup> The EPCA definition for “commercial package air conditioning and heating equipment” specifically excludes ground water source equipment. (42 U.S.C. 6311(8)(A)).

comments not specific to any one equipment category or test procedure. This section addresses those comments.

NCI recommended that DOE follow the development of ASHRAE 221P, “Test Method to Measure and Score the Operating Performance of an Installed Constant Volume Unitary HVAC System,” and consider where it may be appropriately applied within EPCA test procedures. (NCI, No. 4 at pp. 1–2) NCI stated that it has collected data indicating that typical split systems and packaged units serving residential and small commercial buildings typically deliver 50 percent to 60 percent of the rated capacity to the occupied zone, thereby making laboratory tests unrepresentative of field performance. *Id.*

DOE notes that ASHRAE Standard 90.1 does not reference ANSI/ASHRAE Standard 221–2020, “Test Method to Field-Measure and Score the Cooling and Heating Performance of an Installed Unitary HVAC System”<sup>9</sup> as the applicable test procedure for VRF multi-split systems. NCI also did not provide data on field performance or any correlations between field performance and laboratory test performance for VRF multi-split systems for DOE to consider. Furthermore, ASHRAE 221–2020 does not provide a method to determine the efficiency of VRF multi-split systems. As discussed, DOE is proposing to incorporate by reference AHRI 1230–2021, the most recently published version of the industry test procedure recognized by ASHRAE Standard 90.1 for VRF multi-split systems.

The CA IOUs commented that while the July 2017 ASHRAE TP RFI expressed interest in reducing burden to manufacturers, DOE already took steps to reduce this burden by allowing alternative energy efficiency or energy use determination methods (“AEDMs”). (CA IOUs, No. 7 at pp. 1–2). The CA IOUs stated that there are no further opportunities to streamline test procedures to limit testing burden. *Id.* at 2. Additionally, the CA IOUs emphasized the importance of accurate efficiency ratings for its incentive programs and customer knowledge, referencing the statutory provision that test procedures must produce results that are representative of the product’s energy efficiency. *Id.*

Lennox stated that it generally supports DOE meeting the statutory requirements to design test procedures to measure energy efficiency during an average use cycle, but requested that

DOE also consider overall impacts to consumers and manufacturers. (Lennox, No. 8 at pp. 1–2) Lennox also stated that, in commercial applications, predicting actual energy use from a single metric is difficult, and such a metric better serves as a point of comparison. *Id.* Lennox suggested that DOE strike a balance between evaluating equipment in a meaningful way without introducing unwarranted regulatory burden from overly complex test procedures or calculations that provide little value to consumers. *Id.*

In response to the CA IOUs and Lennox, DOE notes that its approach to test procedures is governed by EPCA’s requirements. As discussed, EPCA prescribes that the test procedures for commercial package air conditioning and heating equipment must be those generally accepted industry testing procedures or rating procedures developed or recognized by industry as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) If such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines by a rule published in the **Federal Register** and supported by clear and convincing evidence that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B) and (C)) In establishing or amending its test procedures, DOE must develop test procedures that are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment during a representative average use cycle and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) DOE’s considerations of these requirements in relation to individual test method issues are discussed within the relevant sections of this NOPR.

The Joint Advocates stated that there a number of ambiguities in industry test procedures and that DOE should address these ambiguities in order to provide a level playing field for manufacturers and to ensure that any verification or enforcement testing is consistent with the manufacturer’s own testing. (Joint Advocates, No. 9 at p. 2)

DOE has evaluated the industry test standard in the context of the statutory criteria regarding representativeness of the measured energy efficiency and test burden. To the extent there are provisions in the relevant industry test procedure that may benefit from further detail, such provisions are discussed in the previous sections of this document.

### C. Proposed Organization of the VRF Multi-Split System Test Procedure

DOE is proposing to relocate and centralize the current test procedure for VRF multi-split systems to a new appendix D to subpart F of part 431. As proposed, appendix D would not amend the current test procedure. The test procedure as provided in proposed appendix D would continue to reference ANSI/AHRI 1230–2010 with Addendum 1 and provide for determining EER and COP. The proposed appendix D would centralize the additional test provisions currently applicable under 10 CFR 431.96, *i.e.*, optional break-in period for tests conducted using AHRI 1230–2010 (10 CFR 431.96(c)); refrigerant line length corrections for tests conducted using AHRI 1230–2010 (10 CFR 431.96(d)); additional provisions for equipment set-up (10 CFR 431.96(e)); and manufacturer involvement in assessment or enforcement testing for variable refrigerant flow systems (10 CFR 431.96(f)). As proposed, VRF multi-split systems would be required to be tested according to appendix D until such time as compliance is required with an amended energy conservation standard that relies on the IEER metric, should DOE adopt such a standard.

Pursuant to EPCA, DOE is also proposing to amend the test procedure for VRF multi-split systems by adopting AHRI 1230–2021 in a new appendix D1 to subpart F of part 431. DOE proposes to adopt the updated version of AHRI 1230, including the IEER metric, as discussed in the following sections. As proposed, VRF multi-split systems would not be required to test according to the test procedure in proposed appendix D1 until such time as compliance is required with an amended energy conservation standard that relies on the IEER metric, should DOE adopt such a standard.

### D. Industry Standards

#### 1. Updates to AHRI 1230

As discussed, DOE’s current test procedure for VRF multi-split systems incorporates by reference ANSI/AHRI 1230–2010, excluding Sections 5.1.2 and 6.6. *See* Table 1 at 10 CFR 431.96. In September 2017, AHRI published an updated version of AHRI Standard 1230—AHRI Standard 1230–2014 with Addendum 1 “2014 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment” (AHRI 1230–2014 with Addendum 1). Based on a comparison of the 2014 version and ANSI/AHRI 1230–2010, the edits changed the scope of the VRF certification program and

<sup>9</sup> Available at <https://webstore.ansi.org/Standards/ASHRAE/ANSIASHRAEStandard2212020>.

VRF-specific definitions, and added appendices for unit configuration for capacity above 65,000 Btu/h and development of supplemental testing instructions. DOE tentatively concludes that the changes in the 2014 version do not substantively affect testing for EER (the current Federal metric). Therefore, DOE has tentatively determined that its current test procedure, which references ANSI/AHRI 1230–2010, is consistent with AHRI 1230–2014 with Addendum 1.

As discussed in section I.B, the VRF TP Term Sheet recommended that DOE adopt the 2019 draft version of AHRI 1230, but with several additional changes to be implemented, including:

- A hierarchy of instructions for how to set up the unit under test, and a clarification that “as-shipped” settings should be used as a last resort when instructions are not provided in the supplemental testing instructions (“STI”) and/or the manufacturer’s installation instructions (“MI”).
- Equations and example calculations of adjustments to measured results for steady-state tests if sensible heat ratio (“SHR”) <sup>10</sup> limits are not met at the 100 percent full load and/or 75 percent part load cooling test points.
- Further definition of the draft CVP, including definition of time periods for determining critical parameter validation and allowable critical parameter tolerances using manufacturer-provided data. (Docket No. EERE–2018–BT–STD–0003–0044 at p. 2)

After the VRF ASRAC Working Group meetings in 2019, DOE provided technical support in an AHRI 1230 Technical Committee to address the outstanding items identified in the VRF TP Term Sheet. On the last item—determining critical parameter tolerances—DOE compiled anonymized, aggregated test data to share with the committee. In a presentation to the AHRI 1230 Technical Committee on September 10, 2020, DOE shared data on the variability of critical parameter results as measured during different CVP runs, as well as data on how the measured IEER changed in response to changes in critical parameters. (EERE–2018–BT–STD–0003–0063) DOE presented options that could be considered to express the maximum

<sup>10</sup> Cooling load is composed of both sensible and latent portions. The sensible load is the energy required to reduce the temperature of the incoming air, without any phase change. The latent load is the energy required to change the moisture in the air from water vapor into a liquid phase as it condenses on the cooling coil. Sensible heat ratio is a ratio of the sensible cooling capacity to the total cooling capacity at a given test condition.

allowable variation in critical parameters as a “budget” (see section III.H.4 of this NOPR for description of the critical parameter budget method). The AHRI 1230 Technical Committee incorporated a budget of 70 points (a measure of critical parameter variation, as discussed in section III.H.4 of this NOPR) in AHRI 1230.

Following the completion of the AHRI 1230 Technical Committee meetings, in May 2021, AHRI published AHRI 1230–2021, which supersedes AHRI 1230–2014 with Addendum 1. The 2019 draft considered by the Working Group incorporated preliminary versions of the CVP, provided example calculations for IEER, and added other new provisions to clarify how the test procedure should be conducted. The changes recommended in the VRF TP Term Sheet were incorporated into AHRI 1230–2021. The following list includes substantive changes in AHRI 1230–2021 as compared to AHRI 1230–2010 currently used for certification:

1. Air-cooled VRF multi-split systems with cooling capacity less than 65,000 Btu/h were removed from the scope of the industry test standard. These systems are addressed by AHRI 210/240–2023 “Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment.”
2. Maximum SHR limits of 0.82 and 0.85 were added for full load and 75 percent part-load conditions, respectively.

3. A CVP was added that verifies that the values certified in the STI for setting critical parameters during steady-state testing are within the range of critical parameters that would be used by the system’s native controls at the same conditions. A 70-point budget was also added as the criteria for critical parameter validation during the CVP.

4. A hierarchy was added indicating which sources of manufacturer’s instructions to use during testing in the case of conflicting information among different sources.

5. Provisions were updated for refrigerant piping length requirements and for the correction factors applied in the case of excess refrigerant piping length used during testing.

6. For water-source equipment, the maximum water flow rate was reduced and part-load entering water temperatures were modified.

7. New provisions were added to specify test methods and conditions for cases in which condenser head pressure controls result in unstable operation in part-load cooling tests.

8. The provisions for tested combinations, which specify the indoor unit combination to be used for testing,

were updated to remove “highest sales volume” requirements and replaced with a specific hierarchy based on “indoor unit model family”—e.g., wall-mounted, compact 4-way ceiling cassette, mid-static ducted.

9. A maximum airflow rate of 55 standard cubic feet per minute (“scfm”) per 1000 Btu/h was added for non-ducted indoor units, and the maximum airflow rate was increased for ducted indoor units from 37.5 scfm per 1000 Btu/h to 42 scfm per 1000 Btu/h.

10. Test tolerances for indoor air entering wet-bulb temperatures were increased. Specifically, the indoor wet-bulb temperature operating tolerance was increased from 1 °F to 1.8 °F. The indoor wet-bulb temperature condition tolerance was also increased from 0.30 °F to 0.36 °F. Additionally, the operating tolerance for external static pressure (“ESP”) for ducted units was changed from 0.05 in H<sub>2</sub>O to 10 percent of the ESP reading.

11. Appendix D to ANSI/AHRI 1230–2010 with Addendum 1, “Test Requirements,” was amended in ANSI/AHRI 1230–2021 and redesignated as Appendix E, “ANSI/ASHRAE Standard 37–2009 Clarifications/Exceptions.” This appendix provides additional instruction and exceptions to the use of ANSI/ASHRAE 37–2009.

12. Informative appendices were added that show example calculations for IEER and the CVP “budget” method, which calculates the variation between measured critical parameter values and STI-reported critical parameter values.<sup>11</sup>

DOE is proposing to adopt the updated version of AHRI 1230, including the IEER metric, as described further in section III.E of this NOPR. DOE proposes to incorporate by reference AHRI 1230–2021 in a new appendix D1 to subpart F of part 431, which would become required for use starting on the compliance date for any amended energy conservation standards based on IEER. DOE reviewed AHRI 1230–2021 to determine whether it meets the requirements of EPCA for incorporation by reference as part of the Federal test method for determining compliance with minimum energy conservation standards. DOE has tentatively determined that the changes in AHRI 1230–2021 better reflect the field performance of VRF multi-split systems and provide additional clarification for testing provisions. Specifically, in the proposed test procedure for VRF multi-split systems in the proposed appendix D1, DOE is proposing to reference the following

<sup>11</sup> See section III.H.4 of this NOPR for further discussion of the CVP budget method.

sections from AHRI 1230–2021: Section 3 (except 3.10), Section 5 (except 5.1.2), Section 6 (except 6.3.3 and 6.5), Section 11, and Section 12. DOE is also proposing to reference appendix E from AHRI 1230–2021 but is not proposing to reference the other appendices. DOE proposes to exclude the remaining sections from its test procedure for VRF multi-split systems because they are either (1) informative appendices not needed in the DOE test procedure, (2) procedures specific to the AHRI verification program that are not warranted for a DOE test procedure, or (3) sections for which DOE is proposing modifications as discussed in the following sections of this NOPR, and listed as excepted previously.

## 2. ASHRAE 37

ANSI/ASHRAE 37–2009, which provides a method of test for many categories of air conditioning and heating equipment, is referenced for testing VRF multi-split systems by ANSI/AHRI 1230–2010, ANSI/AHRI 1230–2014 with Addendum 1, and AHRI 1230–2021. In particular, appendix E of AHRI 1230–2021 provides additional instruction and exceptions regarding the application of the test methods specified in ANSI/ASHRAE 37–2009 to VRF multi-split systems. As stated, ANSI/ASHRAE 37–2009 is referenced in ANSI/AHRI 1230–2010, which is currently the referenced industry test standard in the DOE test procedure for VRF multi-split systems. To reflect the use of ANSI/ASHRAE 37–2009 in conducting testing according to AHRI 1230–2021, DOE is proposing to incorporate by reference ANSI/ASHRAE 37–2009 in its test procedure for VRF multi-split systems. Specifically, in the proposed appendix D1, DOE is proposing to reference all sections of ANSI/ASHRAE 37–2009 except Sections 1, 2, and 4. Specific issues discussed in the July 2017 ASHRAE TP RFI pertaining to ANSI/ASHRAE 37–2009, and the related comments, are addressed in section III.F of this NOPR.

On October 3, 2016, ASHRAE published an errata sheet for ANSI/ASHRAE 37–2009 that corrected the total heating capacity equations for the outdoor liquid coil method in section 7.6.5.1 of the test standard.<sup>12</sup> Therefore, DOE proposes to incorporate by reference ANSI/ASHRAE 37–2009 including the Errata sheet published on October 3, 2016 in the proposed appendix D1.

## E. Metrics

### 1. IEER

DOE currently prescribes energy conservation standards for air-cooled VRF multi-split systems with cooling capacity greater than or equal to 65,000 Btu/h and water-source VRF multi-split heat pumps in terms of the EER metric for cooling-mode operation and in terms of the COP metric for heating-mode operation. Both EER and COP capture the system performance at single, full-load operating points in cooling and heating mode (*i.e.*, single outdoor air temperatures for air-cooled systems and single entering water temperatures for water-source systems). Neither metric provides a seasonal or load-weighted measure of energy efficiency.

In contrast, the IEER metric factors in the efficiency of operating at full-load conditions as well as part-load conditions of 75-percent, 50-percent, and 25-percent of full-load capacity. In general, the IEER metric provides a more representative measure of field performance by weighting the full-load and part-load efficiencies by the average amount of time equipment spends operating at each load. The IEER metric was first introduced into ASHRAE 90.1 for commercial air-cooled, water-cooled, and evaporatively-cooled air conditioning and heat pump equipment in the 2008 Supplement to Standard 90.1–2007, effective January 1, 2010. ASHRAE Standard 90.1–2010 included minimum efficiency levels in terms of both EER and IEER for air-cooled VRF multi-split systems. ASHRAE Standard 90.1–2016 added IEER levels for water-source VRF multi-split heat pump systems, including systems with cooling capacity less than 65,000 Btu/h, in addition to the specified EER levels.

On January 15, 2016, DOE published a direct final rule for energy conservation standards for air-cooled commercial unitary air conditioners (air-cooled CUACs, or ACUACs), which amended the energy conservation standards for ACUACs and changed the cooling efficiency metric from EER to IEER, with compliance required starting January 1, 2018. 81 FR 2420. VRF multi-split systems provide space heating and cooling to commercial buildings in a similar range of climatic conditions as ACUACs. In this NOPR, DOE has initially determined that IEER represents the efficiency of VRF multi-split systems operating in the field more accurately than EER because cooling loads do not require operation at full-load for the vast majority of cooling hours.

As discussed in the July 2017 ASHRAE TP RFI, manufacturers already

test and rate VRF multi-split systems using the IEER metric in the AHRI *Directory of Certified Product Performance* for VRF multi-split systems.<sup>13</sup> 82 FR 34427, 34445. The publication of IEER ratings for most units on the market and the inclusion of minimum efficiency levels and test procedures in terms of IEER for VRF multi-split systems in ASHRAE Standard 90.1 and AHRI Standard 1230 indicates that IEER is an industry-accepted and widely-used metric for measuring efficiency of VRF multi-split systems. In the July 2017 ASHRAE TP RFI, DOE requested comment on any issues it should consider regarding potentially using IEER as an efficiency metric for air-cooled VRF multi-split systems with a cooling capacity greater than or equal to 65,000 Btu/h and water-source VRF multi-split systems. 82 FR 34427, 34445–34446.

In response to the July 2017 ASHRAE TP RFI, AHRI, Lennox, Mitsubishi, Trane, Goodman, Carrier, the CA IOUs, and the Joint Advocates all supported using an IEER metric for VRF multi-split systems. (AHRI, No. 11 at p. 31; Lennox, No. 8 at p. 6; Mitsubishi, No. 10 at p. 1; Trane, No. 12 at p. 2; Goodman, No. 14 at p. 5; Carrier, No. 6 at p. 17; CA IOUs, No. 7 at p. 4; Joint Advocates, No. 9 at p. 6) AHRI, Goodman, and Carrier further commented that IEER should replace EER as the Federal metric, and not be used as an additional metric. (AHRI, No. 11 at p. 31; Goodman, No. 14 at p. 5; Carrier, No. 6 at p. 17) AHRI and Goodman asserted that EPCA requires DOE to establish a single performance standard or a single design requirement. (AHRI, No. 11 at p. 31; Goodman, No. 14 at p. 5) The Joint Advocates commented that VRF multi-split systems should be regulated based on both EER and IEER, while the CA IOUs commented that the IEER metric is appropriate as a national standard as long as the EER value at each of the test points is individually published. (Joint Advocates, No. 9 at p. 6; CA IOUs, No. 7 at p. 4) The Joint Advocates further commented that regulating based on both EER and IEER would have no impact on test burden because manufacturers are already rating their equipment for both. (Joint Advocates, No. 9 at p. 6) CA IOUs also commented that the highest ambient test point required by DOE's test procedure (95 °F outdoor air dry-bulb temperature) is not representative of VRF multi-split systems operating conditions in the hot and dry western climate, and

<sup>12</sup> [www.ashrae.org/standards-research-technology/standards-errata](http://www.ashrae.org/standards-research-technology/standards-errata).

<sup>13</sup> The AHRI directory for VRF multi-split systems is available at: [www.ahridirectory.org/NewSearch?programId=72&searchTypeId=3](http://www.ahridirectory.org/NewSearch?programId=72&searchTypeId=3).

recommended adding a hot-dry condition test point in IEER. (CA IOUs, No. 7 at p. 4)

During the proceedings of the ASRAC negotiated rulemaking process, the Working Group discussed the appropriateness of rating VRF equipment using an IEER metric at the test points prescribed in ANSI/AHRI 1230–2010. (Docket No. EERE–2018–BT–STD–0003–0051 at pp. 13–14) The Working Group also discussed the potential for adding new test points to the IEER metric, including the proposal to add a hot-dry condition test point for IEER, which was also suggested by the CA IOUs in their response to the 2017 ASHRAE TP RFI. (EERE–2018–BT–STD–0003–0051; CA IOUs, No. 7 at p. 4) Ultimately, the Working Group did not adopt a hot-dry condition test point in its recommendations. The VRF TP Term Sheet states that VRF multi-split systems should be rated with the IEER metric to allow consumers to make consistent comparisons with other products using the IEER metric. (Docket No. EERE–2018–BT–STD–0003–0044 at p. 1) Additionally, during a presentation delivered by DOE at the September 20, 2019 Working Group meeting, AHRI indicated that they would submit a letter to the docket stating that the AHRI certification program would continue to use both EER and IEER cooling metrics for VRF multi-split systems. (Docket No. EERE–2018–BT–STD–0003–0052 at p. 72).

In this NOPR, DOE is proposing to adopt the relevant provisions in AHRI 1230–2021 to determine IEER for VRF multi-split systems. As noted, the energy conservation standards for VRF multi-split systems are in terms of EER. Testing according to the DOE test procedure to determine EER would continue to be required until such time as the energy conservation standards are amended to rely on IEER, should DOE adopt such changes to the standards. Requiring both EER and IEER would result in multiple standards applicable to the cooling function of a VRF multi-split systems. However, EPCA directs DOE to establish an amended uniform national standard for the relevant ASHRAE equipment at the minimum level specified in the amended ASHRAE/IES Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) EPCA’s use of “uniform national standard” and “minimum level” appears to prohibit DOE from establishing more than one standard applicable to the cooling function of a VRF multi-split system. *Id.*

Based on the discussion in the preceding paragraphs, DOE initially finds, that pursuant to 42 U.S.C. 6314(a)(4)(B)), there is a lack of clear

and convincing evidence to establish a test procedure for IEER other than as specified in AHRI 1230–2021.

Consistent with DOE’s proposal to adopt IEER in its test procedure for VRF multi-split systems, DOE also proposes to amend the current definition for “Integrated Energy Efficiency Ratio, or IEER” at § 431.92 to differentiate between ACUACs and VRF multi-split systems. Both systems would use the IEER efficiency metric, but the applicable test procedures are in separate sections of the CFR. Specifically, DOE proposes to amend the definition of “Integrated Energy Efficiency Ratio, or IEER” at 10 CFR 431.92 to clarify that IEER is measured per the test procedure in appendix A to subpart F of part 431 for ACUACs and per the proposed test procedure at appendix D1 for VRF multi-split systems.

*Issue 1:* DOE requests feedback on its proposal to adopt IEER as determined under AHRI 1230–2021 in the Federal test procedure for VRF multi-split systems. DOE also seeks comment on its proposed amendment to the definition for IEER at § 431.92 to distinguish between the test procedures for ACUACs and VRF multi-split systems.

DOE notes that AHRI 1230–2021 also provides test methods and calculations for measuring simultaneous cooling and heating efficiency (“SCHE”). ASHRAE Standard 90.1–2019 does not include efficiency levels for VRF multi-split systems in terms of SCHE, and the VRF TP Working Group did not consider or analyze the SCHE metric (and thus it was not included in the VRF TP Term Sheet). Further, SCHE is a distinctly different metric from other efficiency metrics for VRF multi-split systems, as SCHE combines cooling and heating performance into a single metric. For these reasons DOE is not proposing to include SCHE in its updated test procedure for VRF multi-split systems.

## 2. Test Conditions Used for Efficiency Metrics

AHRI 1230–2021 provides a number of test conditions for a variety of tests referred to in the industry test procedure as “standard rating tests” and “performance operating tests.” DOE is proposing to specify in the test procedure for VRF multi-split systems which test conditions would be required for compliance with standards, were DOE to amend the energy conservation standards based on AHRI 1230–2021, and to specify additional test conditions that would be included in the DOE test procedure for making optional representations of efficiency.

### a. Air-Cooled VRF Multi-Split Systems

Table 9 of AHRI 1230–2021 specifies test conditions for standard rating and performance operating tests for air-cooled VRF multi-split systems. Were DOE to amend the applicable energy conservation standards based on AHRI 1230–2021, the relevant ratings for cooling tests would be those referred to as “standard rating conditions” in AHRI 1230–2021. To clarify this, DOE proposes to specify in section 3.1 of the proposed appendix D1 that the cooling test conditions used for compliance would be the “Standard Rating Conditions, Cooling” and “Standard Rating Part-Load Conditions (IEER)” conditions specified in Table 9 of AHRI 1230–2021.

For heating mode tests of air-cooled VRF multi-split systems, AHRI 1230–2021 includes “Standard Rating Conditions” for both a “High Temperature Steady-state Test for Heating” and a “Low Temperature Steady-state Test for Heating” (conducted at 47 °F and 17 °F outdoor air dry-bulb temperatures, respectively). Were DOE to amend the applicable energy conservation standards based on AHRI 1230–2021, the relevant ratings would be those referred to as “High Temperature Steady-state Test for Heating” in AHRI 1230–2021 and measured at 47 °F. To clarify this, DOE proposes to specify in section 4.1 of appendix D1 that the heating test conditions used for compliance would be the “Standard Rating Conditions (High Temperature Steady-state Test for Heating)” conditions specified in Table 9 of AHRI 1230–2021. Additionally, DOE proposes to also include the low-temperature (17 °F) heating test condition specified in Table 9 of AHRI 1230–2021 (referred to as “Low Temperature Steady-state Test for Heating”) in the proposed test procedure, and specify in section 4.1.1 of appendix D1 that representations of COP at this low-temperature heating condition are optional.

### b. Water-Source VRF Multi-Split Systems

Tables 10 and 11 of AHRI 1230–2021 specify test conditions for cooling mode and heating mode tests, respectively, for water-source VRF multi-split systems. These tables include conditions for both standard rating and performance operating tests. Furthermore, both tables specify test conditions for three different applications of water-source VRF multi-split systems: water loop heat pumps, ground-water heat pumps, and ground-loop heat pumps. Were DOE to amend the energy conservation

standards based on AHRI 1230–2021, the relevant ratings for cooling and heating tests would be those referred to as “standard rating conditions” for “water loop heat pumps” in AHRI 1230–2021. To clarify this, DOE proposes to specify in section 3.2 of the proposed appendix D1 that the test conditions used for compliance would be the “Part-load Conditions (IEER)” conditions specified for “Water Loop Heat Pumps” in Table 10 of AHRI 1230–2021 for cooling mode tests and the “Standard Rating Test” conditions specified for “Water Loop Heat Pumps” in Table 11 of AHRI 1230–2021 for heat pump heating mode tests.

DOE also proposes to include cooling and heating mode test conditions specified for “Ground-loop Heat Pumps” in Tables 10 and 11 in the DOE test procedure for optional representations for water-source VRF multi-split systems. Specifically, DOE proposes to specify in section 4.2.1 of appendix D1 that representations of EER made using the “Standard Rating Test” conditions specified for “Ground-loop Heat pumps” in Table 10 of AHRI 1230–2021 and representations of COP made using the “Standard Rating Test” conditions specified for “Ground-loop Heat Pumps” in Table 11 of AHRI 1230–2021 are optional.

The EPCA definition for “commercial package air conditioning and heating equipment” specifically excludes ground-water-source equipment (42 U.S.C. 6311(8)(A)). Therefore, DOE is not proposing to include test conditions in the proposed Federal test procedure for making optional representations of cooling and heating efficiency for water-source VRF multi-split systems in the “Ground-water Heat Pump” application.

#### F. Test Method

This section discusses certain issues related to testing VRF multi-split systems, several of which were identified by DOE in the July 2017 ASHRAE TP RFI and subsequently addressed in AHRI 1230–2021. Additionally, several of the issues raised by DOE in the July 2017 ASHRAE TP RFI and by commenters relate to changes to the 2019 draft version of AHRI 1230 recommended by the VRF TP Term Sheet. These VRF TP Term Sheet recommendations have also been addressed in AHRI 1230–2021. Therefore comments received regarding these issues are briefly summarized but are otherwise addressed by referencing the relevant language in AHRI 1230–2021.

#### 1. Setting Indoor Airflow and External Static Pressure

The performance of a VRF multi-split system can be significantly affected by variation in ESP or operation with an indoor airflow that is different from the intended or designed airflow. In the July 2017 ASHRAE TP RFI, DOE raised several issues associated with setting indoor airflow and ESP for VRF multi-split systems. 82 FR 34427, 34446. These issues are addressed in Section 6.3.1 of AHRI 1230–2021, and DOE is not proposing any deviations from those provisions. These issues are discussed in the following sections.

#### a. Indoor Airflow and ESP Settings for Different Capacity Ranges

DOE noted in the July 2017 ASHRAE TP RFI that a 2015 draft version of AHRI 1230 contained one set of instructions for setting the indoor air flow rates for systems with capacities less than 65,000 Btu/h (section 6.3.3.1) and another set for systems with capacities larger than 65,000 Btu/h (section 6.4.1). 82 FR 34427, 34446. It was not clear to DOE why alternate approaches are required for different systems, because the indoor units generally do not differ by system capacity. *Id.* Therefore, DOE requested comment on whether there should be a consistent approach for setting indoor airflow and ESP across all capacity ranges of VRF multi-split systems. *Id.* In response, Lennox commented that the airflow and ESP requirements for VRF multi-split systems with cooling capacity above and below 65,000 Btu/h should be the same. (Lennox, No. 8 at p. 8). Carrier commented that the different approach for setting indoor airflow rates across capacity ranges was being addressed by AHRI in drafting AHRI 1230. (Carrier, No. 6 at p. 19) AHRI commented that a more recent draft of AHRI 1230 contained new requirements for airflow, and that the test requirements would be different for part-load conditions but consistent for full-load conditions. (AHRI, No. 11 at pp. 34–35).

AHRI 1230–2021 includes updated provisions in Section 6.3.1 for setting indoor airflow and ESP that apply to air-cooled VRF multi-split systems with cooling capacity greater than or equal to 65,000 Btu/h and to all water-cooled VRF multi-split systems. Air-cooled VRF multi-split systems with rated cooling capacity less than 65,000 Btu/h are not within the scope of AHRI 1230–2021, and are instead within the scope of a different industry test procedure (AHRI 210/240–2023). Therefore, test procedures for three-phase, air-cooled VRF multi-split systems with cooling

capacity less than 65,000 Btu/h are not being considered in this NOPR. Those will be addressed in a separate test procedure rulemaking for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h. DOE is not proposing any deviations from Section 6.3.1 of AHRI 1230–2021 regarding setting indoor airflow and ESP.

#### b. Test Setup for Non-Ducted Indoor Units

DOE explained in the July 2017 ASHRAE TP RFI that if a common duct is used for the combined discharge airflow of multiple individual units, the airflow for each individual unit cannot be verified. 82 FR 34427, 34447. Even if the ESP is set to zero in an attempt to replicate operation without ducting, based on a measurement of downstream pressure in a discharge duct this does not always guarantee that flow is identical to free discharge conditions, due to sensitivity of such in-duct pressure measurements to the air movement in the duct. *Id.* Finally, specification of unusually high air flows for testing of free discharge in indoor units may boost measured performance inconsistent with field operation. *Id.* DOE requested comment on how to confirm airflow for each indoor unit individually, or when there is deviation from free-discharge operation, when there is a common duct for multiple individual units. *Id.*

In response, AHRI, Carrier, Mitsubishi, and Goodman commented that it is not feasible nor economically justified to confirm airflow of individual indoor units when a common duct is used. (AHRI, No. 11 at p. 35; Carrier, No. 6 at p. 20; Mitsubishi, No. 10 at p. 2; Goodman, No. 14 at p. 7) Specifically, AHRI stated that it is currently infeasible to confirm airflow for multiple individual indoor units.<sup>14</sup> (AHRI, No. 11 at p. 35) AHRI stated that the third-party laboratory that it uses for its certification program is only equipped with one code tester (*i.e.*, airflow-measuring apparatus) per test room. (*Id.*) AHRI suggested, however, that the use of thermocouple grids on every outlet on each unit and temperature checks on indoor liquid and indoor gas per unit, combined with static pressure taps, helps identify any potential deviation from free-discharge

<sup>14</sup> AHRI stated that it is currently not feasible to test VRF products with up to 12 indoor units. Given DOE’s awareness that industry has the capability to test VRF multi-split systems with up to 12 indoor units, DOE interprets AHRI’s comment as referring to the infeasibility of confirming the airflow of individual indoor units.

operation on any unit. (*Id.*) Lennox commented that the test protocol for testing non-ducted indoor units does not guarantee zero static pressure at the inlet and outlet of each indoor unit; however, solving this issue is not easy due to laboratory limitations. (Lennox, No. 8 at p. 8) Lennox suggested that improvement to the test method could be made to measure airflow at each indoor unit, but that would require larger and more test rooms. (*Id.*) Lennox noted that experience has indicated that the common duct may show a lower airflow measurement compared to measuring airflow of each non-ducted indoor unit independently. (*Id.* at pp. 8–9)

Section 6.3.1.3 of AHRI 1230–2021 allows the use of a common duct to connect multiple indoor units to a single airflow-measuring apparatus. To ensure that the tests for non-ducted indoor units are being conducted under conditions that reflect operation absent the use of a common duct, AHRI 1230–2021 specifies that a static pressure tap be placed in the center of each face of each discharge chamber that connects each indoor unit to the common duct, and that the static pressure difference between each discharge chamber measurement and intake opening of the equipment under test be zero. DOE tentatively surmises that the approach provided in AHRI 1230–2021 represents industry consensus regarding the most appropriate and representative configuration for testing non-ducted indoor units. As discussed, DOE is not proposing any deviations from the provisions in Section 6.3.1 of AHRI 1230–2021 regarding setting indoor airflow and ESP.

#### c. Maximum Airflow Rate

Increasing the airflow rates at which indoor units of VRF multi-split systems are tested generally improves measured performance. Testing at an unusually high airflow rate may boost performance in a manner inconsistent with field operation. As part of the July 2017 ASHRAE TP RFI, DOE requested comment on whether there should be an upper limit of airflow per capacity for all non-ducted VRF indoor units, such as 55 scfm per 1,000 Btu/h, which was the limit included in the 2015 draft version of AHRI 1230. 82 FR 34427, 34447.

In response, AHRI, Carrier, and Goodman all expressed support for an airflow limit of 55 scfm per 1,000 Btu/h for non-ducted units, stating that such an upper limit would prevent manufacturers from running higher airflows for rating purposes that are not typical for actual use. (AHRI, No. 11 at

pp. 34–35; Carrier, No. 6 at p. 20; Goodman, No. 14 at p. 7) Lennox did not support the 55 scfm per 1,000 Btu/h airflow limit for non-ducted indoor units, and commented that to align the test procedure with field operation, VRF multi-split systems should be tested without an airflow limit. (Lennox, No. 8 at p. 9)

Section 6.3.1.3 of AHRI 1230–2021 includes an upper limit on airflow per capacity for VRF multi-split systems with non-ducted indoor units during cooling tests. The rated airflow for each non-ducted indoor unit must not exceed the lower of two limits: (1) 105% of the nominal airflow published in product literature for that indoor unit, or (2) 55 scfm per 1,000 Btu/h of nominal indoor unit cooling capacity. Section 6.3.1.3 of AHRI 1230–2021 also specifies that if a common duct is used to measure airflow for multiple indoor units—if airflow is not individually measured for each indoor unit—these limits are calculated based on the sum of nominal capacities and nominal airflows for all of the indoor units connected to the common duct. Section 6.3.1.4 of AHRI 1230–2021 specifies that these same provisions (in Section 6.3.1.3) apply for ducted indoor units, except that the airflow limit for ducted indoor units is 42 scfm per 1,000 Btu/h instead of 55 scfm per 1,000 Btu/h. DOE surmises that the approach to maximum airflow rate provided in AHRI 1230–2021 represents the industry consensus regarding the most appropriate and representative maximum airflow rate for testing VRF multi-split systems. Therefore, DOE also surmises that Lennox’s position on these provisions, expressed in the comments in response to the July 2017 ASHRAE TP RFI, changed while developing that industry consensus standard. As discussed, DOE is not proposing any deviations from the provisions in Section 6.3.1 of AHRI 1230–2021 regarding setting indoor airflow and ESP.

#### 2. Condenser Head Pressure Controls

Condenser head pressure controls regulate the flow of refrigerant through the condenser and/or adjust operation of condenser fans/water valves to prevent condenser pressures from dropping too low during low-ambient operation. When employed, these controls ensure that the refrigerant pressure is high enough to maintain adequate flow through refrigerant expansion devices such as thermostatic expansion valves. The use of condenser head pressure controls impacts a unit’s performance, making it important that this feature operate during testing because it would operate in the field. In the July 2017

ASHRAE TP RFI, DOE requested comment on the appropriateness of requiring head pressure control activation during testing of VRF multi-split systems. 82 FR 34427, 34447.

AHRI, Mitsubishi, and Carrier stated that head pressure controls should be activated during the test for VRF multi-split systems, as manufacturers have different algorithms for controlling head pressure and VRF multi-split systems cannot be maintained manually. (AHRI, No. 11 at p. 35; Mitsubishi, No. 10 at p. 2, Carrier, No. 6 at p. 20) Goodman stated that head pressure control activation is not necessary for testing, as all VRF multi-split systems are variable speed, and system refrigerant pressures are kept at appropriate levels by controlling the compressor and outdoor fan speed. (Goodman, No. 14 at p. 7) Lennox stated that whether head pressure control is activated or not will have no impact on testing. (Lennox, No. 8 at p. 8)

DOE also requested information regarding methods that could be added to the test procedure for VRF multi-split systems to be used if head pressure controls prevent stable operation at low-ambient, part-load conditions, such as the special test provisions described in section F7.1 of AHRI 340/360–2015 for CUACs. 82 FR 34427, 34441, 34447. Specifically, DOE requested comment on whether a head pressure control activation requirement was appropriate for testing of VRF multi-split systems, as well as any additional methods that could be incorporated into the VRF multi-split system test procedure to calculate system efficiency if head pressure controls prevent stable operation at low-ambient, part-load conditions. *Id.* In response, Goodman commented that there is no need for head pressure control activation when testing, and, therefore, no need to address head pressure control instability. (Goodman, No. 14 at p. 7) Carrier commented that VRF manufacturers need more time to evaluate the issue. (Carrier, No. 6 at p. 20)

Section 5.2 of AHRI 1230–2021 specifies that units with head pressure controls have those controls enabled and operating in automatic control mode during testing, set at factory settings or per manufacturer installation instructions. Section 5.2.2 of AHRI 1230–2021 also includes a head pressure control time average test, to be used if head pressure controls prevent a unit from achieving “Stable Conditions” as defined by the test standard. Sections 5.2.3 and 5.2.4 provide additional direction for achieving stability, and are to be used if the tolerances for the head



pressure control time average test cannot be met. Absent any indication that activation of condenser head pressure controls results in test results that are unrepresentative or that such activation is unduly burdensome, DOE proposes adopting the AHRI 1230–2021 provisions specifying activation of head pressure controls during testing, with the additional clarification (in section 5.1 of the proposed appendix D1) that head pressure controls are to be set per manufacturer installation instructions or per factory settings if no instructions are provided. DOE is not proposing any additional deviations from the head pressure controls provisions in Section 5.2 of AHRI 1230–2021.

### 3. Indoor Unit Operation During Part-Load Tests

When VRF multi-split systems operate at low cooling loads in field applications, typically only certain zones require cooling. Therefore, at low cooling loads VRF indoor units serving zones with no cooling or heating load typically turn off. In the July 2017 ASHRAE TP RFI, DOE requested information and data on the field operating states of indoor units of VRF multi-split systems when operating at low compressor speeds, near 25-percent load. 82 FR 34427, 34446.

Commenters generally responded that applications vary greatly with load characteristics, so there is not one operation mode that is representative of all field scenarios, and therefore manufacturers should not be required to turn off any indoor units during the test. (AHRI, No. 11 at pp. 33–34; Goodman, No. 14 at p. 6; Mitsubishi, No. 10 at p. 2; Carrier, No. 6 at pp. 18–19; Lennox, No. 8 at p. 7) Additionally, they commented that shutting off indoor units would require retesting and would add burden and variability to the test procedure. (*Id.*)

Section 5.10 of AHRI 1230–2021 requires that the number of indoor units that are thermally active during full-load and part-load tests be in accordance with the STI, and that at least half of the total indoor units—as calculated per the total capacity of the connected indoor units—remain thermally inactive for the 25 percent load test. Furthermore, section 5.10 requires the following for thermally inactive indoor units: (1) Forced air circulation through the units shall be prevented (*e.g.*, by blocking the inlet and outlet); and (2) the indoor unit control settings shall be set to “OFF” (*e.g.*, by using remote or wireless thermostat). DOE surmises that AHRI’s and industry’s original positions on these provisions regarding inactive

indoor units, as set forth in the comments in response to the July 2017 ASHRAE TP RFI, changed while developing the industry consensus standard in AHRI 1230–2021. DOE is not proposing any deviations from the provisions regarding indoor units that are thermally active in Section 5.10 of AHRI 1230–2021.

### 4. Transient Testing: Oil Recovery Mode

VRF multi-split systems may periodically operate in an oil recovery mode to return oil from the refrigeration loop to the compressor. When undergoing oil recovery, the compressor(s) may increase operating speed, electronic expansion valves may open wider than normal, and indoor fans may be turned off, to allow more liquid refrigerant mass flow in the system. The higher refrigerant velocity helps to entrain the compressor oil that was blocked in the indoor refrigerant lines and return it to the compressor(s).

The current DOE test procedure for VRF multi-split systems specifies through reference to ANSI/AHRI 1230–2010 that oil recovery mode should be activated if the system is designed to initiate the oil recovery mode more frequently than every two hours, but the test procedure does not specify a transient test method or other provisions specific to testing a unit with oil recovery. In the July 2017 ASHRAE TP RFI, DOE requested comment on the impact of oil recovery mode on power input and heating/cooling provided to space. 82 FR 34427, 34446 (July 25, 2017). DOE also requested comment on whether any VRF multi-split systems operate in oil recovery mode more frequently than every two hours of continuous operation. *Id.* For such systems, DOE requested comment on whether and how the test method should address the transient operation occurring during and after oil recovery. *Id.* In addition, DOE requested comment on the performance variation associated with oil level and whether all measurements should be made within a certain time after the last oil recovery. *Id.* AHRI, Mitsubishi, Goodman, and Lennox all commented that they did not support the incorporation of oil recovery into the test procedure. (AHRI, No. 11 at p. 34; Mitsubishi, No. 10 at p. 2; Goodman, No. 14 at p. 6; Lennox, No. 8 at p. 8) They stated that oil recovery seldom occurs, and only during periods of time at very low refrigerant flow rates, which would not be expected to occur during testing. (*Id.*)

Section 5.1.3 of AHRI 1230–2021 specifies that oil recovery mode must be activated during test, regardless of the frequency of oil recovery cycles. If oil

recovery occurs with a frequency that prevents a steady state test, AHRI 1230–2021 specifies the use of the transient test procedure as described in Section 8.8.3 (except Section 8.8.3.3) of ANSI/ASHRAE 37–2009, with modifications described in Section 5.1.3.1 of AHRI 1230–2021. In light of the inclusion of oil recovery mode provisions in AHRI 1230–2021, DOE surmises that AHRI’s and industry’s original position on these conditions, as set forth in the comments in response to the July 2017 ASHRAE TP RFI, changed while developing AHRI 1230–2021. DOE is not proposing any deviations from the provisions regarding oil recovery mode in Section 5.1.3 of AHRI 1230–2021.

### 5. Secondary Methods for Capacity Measurement

Section 7.2.1 of ANSI/ASHRAE 37–2009 is referenced by AHRI 1230–2021 and specifies the indoor air enthalpy method, plus an additional secondary method for calculating the test equipment capacity for all units with a rated cooling capacity less than 135,000 Btu/h. Additionally, Section 10.1.2 of ANSI/ASHRAE 37–2009 specifies that the secondary capacity measurement must agree with the primary capacity measurement to within 6 percent for equipment with cooling capacity less than 135,000 Btu/h. In the July 2017 ASHRAE TP RFI, DOE requested comment on the methods generally used for measurement of capacity for VRF multi-split systems and whether the selection of methods differs between cooling and heating tests. 82 FR 34427, 34447. DOE also requested comment on how to standardize the selection of test methods for measuring the capacity of VRF multi-split systems. *Id.*

Commenters stated that there are challenges associated with secondary capacity methods for VRF multi-split systems, such as the refrigerant enthalpy and outdoor air enthalpy methods. (AHRI, No. 11 at p. 36; Carrier, No. 6 at p. 21) For example, AHRI stated that the refrigerant enthalpy method is not possible due to the range at which the flow meter would need to operate, and the fact that the presence of a metering device in the outdoor unit of some equipment would make it impossible to use a refrigerant flow meter. (*Id.*) AHRI further stated that the outdoor air enthalpy method is possible, but would require multiple code testers for testing more than one outdoor unit, or additional testing to cover multiple outdoor units tested together. (*Id.*) Carrier stated that for heat pump VRF systems, the outdoor air enthalpy may be used. (Carrier, No. 6 at p. 21) Carrier asserted that this method would be

straightforward for single module systems; however, with multiple module systems, testing would be very complex, if not impossible because the ability to measure air flow and capacity from various modules has not been achieved. (*Id.*) Carrier further stated that there is no adequate secondary method for VRF systems with heat recovery. (*Id.*) Carrier asserted that neither the refrigerant enthalpy nor outdoor air enthalpy methods would work due to the complexity of the refrigeration circuits in these units. (*Id.*)

Section 5.1.1 of AHRI 1230–2021 requires that VRF multi-split systems be tested in accordance with ANSI/ASHRAE 37–2009, with additional instruction provided in appendix E of AHRI 1230–2021. Sections E9 and E13 of AHRI 1230–2021 include several modifications to secondary capacity measurement method provisions in ANSI/ASHRAE 37–2009. Specifically, section E9 provides that when using the outdoor air enthalpy method as the secondary method, secondary checks are conducted for only the high temperature full load tests for cooling and heating mode. Section E13 modifies the outdoor air enthalpy method provisions in Section 8.6 of ANSI/ASHRAE 37–2009—*e.g.*, section E13 specifies that the test used for capacity measurement for determination of efficiency metrics is the test without the outdoor air-side test apparatus connected to the outdoor unit. DOE surmises from the inclusion of these secondary method provisions in AHRI 1230–2021 that AHRI’s and industry’s original position on these conditions, as set forth in the comments in response to the July 2017 ASHRAE TP RFI, changed during the course of developing that industry consensus standard. DOE is not proposing any deviations from the provisions regarding secondary capacity measurement in appendix E of AHRI 1230–2021.

## 6. Heat Recovery

Some VRF multi-split systems include a heat recovery control unit to control refrigerant flow between indoor units and provide heating and cooling to different conditioned spaces simultaneously. In the July 2017 ASHRAE TP RFI, DOE requested comment on whether VRF multi-split systems with heat recovery capability can be operated without the heat recovery control unit attached, and if so, whether such systems are typically tested for determining EER, IEER, and COP with the heat recovery control unit attached. 82 FR 34427, 34447. DOE also sought data showing differences in test

results with the heat recovery unit attached or unattached. *Id.*

AHRI, Lennox, and Carrier commented that heat recovery units should be included during all tests for heat recovery systems. (AHRI, No. 11 at p. 36; Lennox, No. 8 at p. 9; Carrier, No. 6 at p. 21) AHRI and Lennox stated that VRF heat recovery models cannot be operated without the heat recovery unit attached because the unit is an integral part of the system that cannot be removed, and, therefore, that the heat recovery unit should be accounted for in testing. (*Id.*)

Section F2.3 of AHRI 1230–2021 specifies that individual models of VRF multi-split systems distributed in commerce with heat recovery components must be tested with the heat recovery components present and installed. Consistent with Section F2.3 of AHRI 1230–2021, DOE proposes at § 429.43(a)(5) to specify that for basic models of VRF multi-split systems distributed in commerce with heat recovery components, the manufacturer must determine represented values for the basic model based on performance of an individual model distributed in commerce with heat recovery components.

### G. Specific Components

An ASRAC working group for certain commercial heating, ventilating, and air conditioning (“HVAC”) equipment (“Commercial HVAC Working Group”),<sup>15</sup> which included VRF multi-split systems, submitted a term sheet (“Commercial HVAC Term Sheet”) providing the Commercial HVAC Working Group’s recommendations. (Docket No. EERE–2013–BT–NOC–0023, No. 52)<sup>16</sup> The Commercial HVAC Working Group recommended that DOE issue guidance under current regulations on how to test certain equipment features when included in a basic model, until the testing of such features can be addressed through a test procedure rulemaking. The Commercial HVAC Term Sheet listed the subject features under the heading “Equipment Features Requiring Test Procedure Action.” (*Id.* at pp. 3–9) The Commercial HVAC Working Group also recommended that DOE issue an enforcement policy stating that DOE

<sup>15</sup> In 2013, members of ASRAC formed the Commercial HVAC Working Group to engage in a negotiated rulemaking effort regarding the certification of certain commercial HVAC equipment, including VRF multi-split systems. The Commercial HVAC Working Group’s recommendations are available at [www.regulations.gov](http://www.regulations.gov) under Docket No. EERE–2013–BT–NOC–0023–0052.

<sup>16</sup> Available at [www.regulations.gov/document/EERE-2013-BT-NOC-0023-0052](http://www.regulations.gov/document/EERE-2013-BT-NOC-0023-0052).

would exclude certain equipment with specified features from Departmental testing, but only when the manufacturer offers for sale at all times a model that is identical in all other features; otherwise, the model with that feature would be eligible for Departmental testing. These features were listed under the heading “Equipment Features Subject to Enforcement Policy.” (*Id.* at pp. 9–15)

On January 30, 2015, DOE issued a Commercial HVAC Enforcement Policy addressing the treatment of specific features during Departmental testing of commercial HVAC equipment. (*See* [www.energy.gov/gc/downloads/commercial-equipment-testing-enforcement-policies](http://www.energy.gov/gc/downloads/commercial-equipment-testing-enforcement-policies)) The Commercial HVAC Enforcement Policy stated that—for the purposes of assessment testing pursuant to 10 CFR 429.104, verification testing pursuant to 10 CFR 429.70(c)(5), and enforcement testing pursuant to 10 CFR 429.110—DOE would not test a unit with one of the optional features listed for a specified equipment type if a manufacturer distributes in commerce an otherwise identical unit that does not include one of the optional features. (*Id.* at p. 1) The objective of the Commercial HVAC Enforcement Policy is to ensure that each basic model has a commercially available version eligible for DOE testing, meaning that each basic model includes either a model without the optional feature(s) or a model with the optional features that is eligible for testing. *Id.* The features in the Commercial HVAC Enforcement Policy for VRF multi-split systems, (*id.* at p. 5), align with the Commercial HVAC Term Sheet’s list designated “Equipment Features Subject to Enforcement Policy.”

AHRI 1230–2021 includes Appendix F, “Unit Configuration for Standard Efficiency Determination—Informative.” Section F2.4 includes a list of features that are optional for testing. Section F2.4 of AHRI 1230–2021 further specifies the following general provisions regarding testing of units with optional features:

- If an otherwise identical model (within the basic model) without the feature is not distributed in commerce, conduct tests with the feature according to the individual provisions specified in Section F2.4 of AHRI 1230–2021.

- For each optional feature, Section F2.4 of AHRI 1230–2021 includes explicit instructions on how to conduct testing for equipment with the optional feature present.

The optional features provisions in AHRI 1230–2021 are generally consistent with DOE’s Commercial HVAC Enforcement Policy, but the

optional features in Section F2.4 of AHRI 1230–2021 do not align with the list of features included for VRF multi-split systems in the Commercial HVAC Enforcement Policy. For VRF multi-split systems, the Commercial HVAC Enforcement Policy specifies four optional features—economizer, coated coil(s), steam/hydronic heat options, and dehumidification components. Of these, steam/hydronic heat options and coated coils are not included in the list of optional features in Section F2.4. DOE understands AHRI 1230–2021 to represent the industry consensus position on testing VRF multi-split systems. As such, DOE understands the industry consensus to be that steam/hydronic heat options and coated coils should not be treated as optional features for VRF multi-split systems and/or that VRF multi split systems are not distributed in commerce with these features.

The list of optional features in Section F2.4 includes five features that are not present in the Commercial HVAC Enforcement Policy for VRF multi-split systems: low ambient cooling dampers, ventilation energy recovery systems (“VERS”), power correction capacitors, hail guards, and fresh air dampers. Three of these features in Section F2.4—low ambient cooling dampers, hail guards, and fresh air dampers—are included for VRF multi-split systems in the “Equipment Features Requiring Test Procedure Action” section of the Commercial HVAC Term Sheet. The remaining two features—power correction capacitors and VERS—may be included in VRF multi-split systems distributed in commerce. Therefore, DOE has tentatively concluded that their inclusion as optional features for VRF multi-split systems is appropriate.

DOE notes that the list of features and provisions in Section F2.4 of appendix F of AHRI 1230–2021 conflates features that can be addressed by testing provisions with features that warrant enforcement relief (*i.e.*, features that, if present on a unit under test, could have a substantive impact on test results and that cannot be disabled or otherwise mitigated). This differentiation was central to the Commercial HVAC Term Sheet, which as noted previously, included separate lists for “Equipment Features Requiring Test Procedure Action” and “Equipment Features Subject to Enforcement Policy,” and remains central to providing clarity in DOE’s regulations. Specifically, models including features for which the impact can be addressed by testing provisions (*e.g.*, UV lights, which can simply be turned off for testing) should be subject to testing and do not warrant

enforcement relief (*i.e.*, no provisions allowing representations based on performance of an otherwise identical model without the feature, and DOE compliance could be assessed based on testing of the model containing the feature and not based on testing of an otherwise identical model without the feature).

Further, Section F2.4 of AHRI 1230–2021 does not provide provisions specific to how DOE would conduct enforcement testing with respect to specific components, as opposed to how manufacturers make representations. Therefore, provisions more explicit than those included in Section F2.4 of AHRI 1230–2021 are warranted to clarify (1) how manufacturers of VRF multi-split systems must make representations with regards to specific components; and (2) how DOE will conduct enforcement testing with respect to specific components (*e.g.*, in which situations DOE would test a tested combination including individual indoor unit models with a specific component present).

In order to provide clarity between test procedure provisions (*i.e.*, how to test a specific unit) and certification and enforcement provisions (*e.g.*, which model to test), DOE is not proposing to incorporate by reference appendix F of AHRI 1230–2021 and instead is proposing related provisions in appendix D1 to subpart F of part 431, § 429.43, and § 429.134. Specifically, in appendix D1, DOE proposes test provisions for specific components, including all of the components listed in Section F2.4 of 1230–2021. These provisions would specify how to test a unit with such a component (*e.g.*, for a unit with hail guards, remove hail guards for testing). These proposed test provisions are consistent with the provisions in Section F2.4 of AHRI 1230–2021 but include revisions for further clarity and specificity (*e.g.*, adding clarifying provisions for how to test units with modular economizers as opposed to units shipped with economizers installed).

In § 429.43(a)(4), DOE is proposing provisions that would allow, in specific cases, determination of represented values for a tested combination of VRF multi-split system based on performance of a system without certain specific components. These provisions are generally consistent with the Commercial HVAC Term Sheet, the Commercial HVAC Enforcement Policy, and Section F2.4 of AHRI 1230–2021. However, unlike in Section F2.4 of AHRI 1230–2021 (but consistent with the Commercial HVAC Term Sheet and the Commercial HVAC Enforcement Policy) and as discussed earlier in this

section, the components to which these provisions apply are limited to those components for which the test provisions for testing a unit with these components may result in differences in ratings compared to testing a unit without these components—specifically, air economizers and dehumidification components, which were included in both the Commercial HVAC Enforcement Policy for VRF multi-split systems and appendix F of AHRI 1230–2021.

Also, because air economizers and dehumidification components are only ever installed as part of the indoor units of VRF multi-split systems, and VRF multi-split systems contain multiple indoor units with potentially distinct model numbers, DOE proposes to adopt language more specific to VRF multi-split systems than the language contained in the Commercial HVAC Enforcement Policy and Section F2.4 of AHRI 1230–2021—*i.e.*, applying the provisions to multiple indoor unit models and tested combinations. For example, DOE uses the term “individual indoor unit models” to account for potential discrepancies across individual indoor unit models that comprise the VRF multi-split system tested combination. This terminology allows for individual consideration of specific components on an indoor unit-by-indoor unit basis to account for scenarios in which one individual indoor unit model in the tested combination may have an “otherwise identical” indoor unit model while other individual indoor unit models in the tested combination may not have an “otherwise identical” indoor unit model.

In summary, for air economizers and dehumidification components, DOE proposes the following:

- If the indoor unit model(s) in a tested combination within a basic model include only individual indoor unit models distributed in commerce with a specific component, or does not include any otherwise identical individual indoor unit models distributed in commerce without the specific component, the manufacturer must determine represented values for the tested combination based on performance of individual indoor unit models with the component present (and consistent with any relevant proposed test procedure provisions in appendix D1).

- If the indoor unit model(s) in a tested combination within a basic model include both individual indoor unit models distributed in commerce with a specific component and otherwise identical individual indoor unit models

distributed in commerce without the specific component, the manufacturer may determine represented values for the tested combination based on performance of individual indoor unit models either with the component present (and consistent with any relevant proposed test procedure provisions in appendix D1) or without the component present.

DOE notes that in some cases, individual indoor unit models may include multiple of the specified components (*i.e.*, both an economizer and dehumidification components) or there may be individual indoor unit models within a tested combination that include various dehumidification components that result in more or less energy use. In these cases, the represented values of performance must be representative of the lowest efficiency found within the indoor unit model(s) in a tested combination.

Additionally, DOE is proposing at § 429.43(b)(4) a certification reporting requirement for supplemental test instructions for VRF multi-split systems regarding specific components, corresponding to the proposed representation requirements for specific components at § 429.43(a)(4).

Specifically DOE proposes that the manufacturer must certify for which specific components (as listed in § 429.43(a)(4)(i)), if any, the following provisions are applicable: (1) The indoor unit model(s) in a tested combination within a basic model include both individual indoor unit models distributed in commerce with the specific component and individual indoor unit models distributed in commerce without the specific component; (2) at least one of the individual indoor unit models distributed in commerce without the specific component is otherwise identical to any given individual indoor unit model distributed in commerce with the specific component; and (3) represented values for the tested combination are based on performance of individual indoor unit models distributed in commerce without the specific component.

Also consistent with the Commercial HVAC Term Sheet and the Commercial HVAC Enforcement Policy, in 10 CFR 429.143(s)(1), DOE is proposing provisions regarding how DOE would test tested combinations within a basic model that include individual indoor unit models distributed in commerce with air economizers or dehumidification components. Specifically:

- If the manufacturer does not certify in accordance with 10 CFR 429.43(b)(4)

both that (1) indoor unit model(s) in a tested combination within a basic model include both individual indoor unit models distributed in commerce with a specific component and otherwise identical individual indoor unit models distributed in commerce without the specific component and (2) represented values for the tested combination are based on performance of individual indoor unit models distributed in commerce without the specific component; then DOE may test the tested combination with individual indoor unit models with the component present (and consistent with any relevant proposed test procedure provisions in appendix D1).

- If the manufacturer certifies in accordance with 10 CFR 429.43(b)(4) both that (1) indoor unit model(s) in a tested combination within a basic model include both individual indoor unit models distributed in commerce with a specific component and otherwise identical individual indoor unit models distributed in commerce without the specific component, and (2) represented values for the tested combination are based on performance of individual indoor unit models distributed in commerce without the specific component, DOE will test the tested combination with otherwise identical indoor unit model(s) within the tested combination within a basic model that do not include the component, except in either of the following situations. In either of the following situations, DOE may test the tested combination with individual indoor unit models with the specific component present (and consistent with any relevant proposed test procedure provisions in appendix D1).

- DOE is not able, through documented reasonable effort, to obtain individual indoor unit models for testing that do not include the component.

- DOE becomes aware that the manufacturer's certification in accordance with 10 CFR 429.43(b)(4) regarding specific components is invalid.

Were DOE to adopt the provisions in appendix D1, § 429.43, and § 429.134 as proposed, DOE would rescind the Commercial HVAC Enforcement Policy to the extent it is applicable to VRF multi-split systems. In a separate certification rulemaking, DOE may consider requiring a manufacturer to identify, in its certifications, the otherwise identical models that do not include specific component(s) that are tested to support representations of basic models that include individual models with specific components.

*Issue 2:* DOE requests comment on its proposals in appendix D1, § 429.43, and § 429.134 regarding specific components.

#### H. Controls Verification Procedure

Section 5.1.2.1 of AHRI 1230–2021 specifies that during steady-state performance rating tests for cooling and heating efficiency, VRF multi-split systems must operate under commands from system controls except for certain components, referred to as “critical parameters,” which are allowed to be set by a manufacturer's representative. These critical parameters are (1) compressor speed(s), (2) outdoor fan speed(s), and (3) outdoor variable valve positions. Settings for critical parameters are allowed to be manually controlled using a manufacturer control tool, as opposed to all other components which must operate per commands from the system controls. The measured performance of VRF multi-split systems depends, in part, on the operating positions of each of these critical parameters. Accordingly, Section 5.1.2 of AHRI 1230–2021 states that operational settings for each of the critical parameters must be specified in the STI, and that each of the critical parameters must be allowed to be manually adjusted (to match the STI-certified values) during testing.

AHRI 1230–2021 also includes a normative Appendix C that specifies a controls verification procedure (“CVP”). The purpose of the CVP is to validate that the observed positions of critical parameters during the CVP are within tolerance of the STI-certified critical parameter values that are set by the manufacturer in steady-state IEER cooling tests (see section III.H.5 of this NOPR for discussion of CVP results). This ensures that the measured results of the IEER test procedure are based on critical parameter settings that are representative of critical parameter behavior that would be experienced in the field.

DOE proposes to adopt the CVP that is specified in appendix C of AHRI 1230–2021. Because the CVP is a verification procedure, not a test procedure used to develop represented values, DOE is proposing to distinguish the CVP as a validation procedure by adopting the CVP procedure in the product-specific enforcement provisions for VRF multi-split systems at § 429.134(s). The proposed inclusion of these provisions at § 429.134(s) would indicate how DOE would conduct a CVP in the event of assessment or enforcement testing. The following subsections discuss the CVP and DOE's CVP-related proposals in detail.

## 1. Background

DOE's current test procedure for VRF multi-split systems includes allowances in 10 CFR 431.96(f) for limited manufacturer involvement in assessment or enforcement testing. A manufacturer's representative may adjust components such as the compressor speed, fan speeds, and valve positions for the purposes of achieving steady-state conditions during testing. 10 CFR 431.96(f). This adjustment process is provided for VRF multi-split systems because of the complexity of VRF multi-split systems and the variety of settings needed to perform a test. 77 FR 28928, 28946 DOE's current certification requirements for VRF multi-split systems, found at § 429.43(b)(4), specify that the STI must include compressor frequency set points and required dip switch/control settings for step or variable components. However, DOE's current regulations do not require these settings to match system behavior when the VRF multi-split system is operating under its own controls. Further, there are no constraints regarding the allowable range of adjustments that a manufacturer's representative may make to reach steady state. Sections 5.1.2 and 5.1.3 of ANSI/AHRI 1230–2010 allow similar adjustments of modulating components to achieve steady-state conditions during ratings tests.

In October 2018, during the negotiation meetings of the Working Group, the CA IOUs raised concern with the representativeness of the ANSI/AHRI 1230–2010 method, particularly with respect to control inputs used at part-load test conditions. (Docket Nos. EERE–2018–BT–STD–0003–0011 and EERE–2018–BT–STD–0003–0013) The CA IOUs presented field and laboratory test data indicating decreased performance at part-load conditions as compared to the part-load performance indicated by the IEER rating and available published performance data for that system when a VRF multi-split system was tested under commands from the system controls (*i.e.*, not manually controlled). *Id.* The VRF TP Term Sheet from the Working Group recommended that DOE adopt an updated draft of AHRI 1230 that included a controls verification procedure as an appendix. (Docket No. EERE–2018–BT–STD–0003–0044 at pp. 1–2).

## 2. Purpose and Description

As discussed, Appendix C of AHRI 1230–2021 establishes a CVP.<sup>17</sup> The

<sup>17</sup> The concept for the CVP originated from a minimum compressor speed verification procedure

CVP verifies whether critical parameter settings certified in the STI, implemented by the manufacturer's representative during full-load and part-load steady-state cooling tests for IEER, are within the range of settings that would be used by the system during operation in the field—the system's native controls. The behavior of each critical parameter is monitored and recorded throughout the duration of a CVP.

In contrast to steady-state tests in which test conditions are held constant, the CVP is a dynamic cooling test method in which certain test conditions are intentionally varied throughout the test. Specifically, the indoor room dry-bulb temperature is steadily decreased during the CVP using the room conditioning apparatus, in order to determine how the VRF multi-split system under test responds to approaching and achieving its setpoint. Outdoor room test conditions are held constant during the CVP. The CVP may be conducted at any of the four IEER outdoor air or entering water temperature conditions.

At the start of the CVP, the indoor room test chamber temperature is controlled to a manufacturer-specified value that must be between 82 °F and 86 °F, and the VRF indoor units are set to control to a constant indoor temperature, 80 °F, except as explained by Section 5.1.5 of AHRI 1230–2021. This Section provides instructions for adjusting the VRF indoor unit setpoints (deviating from 80 °F) to account for set point bias and set point offset.<sup>18</sup> VRF indoor units typically use the calculated temperature difference between the setpoint and the measured indoor air temperature as a control parameter for determining when to shut down and become thermally inactive. As discussed, the timing of the first indoor unit becoming thermally inactive dictates the allowable time period for determining whether certified critical parameter values have been validated, so it is crucial to account for set point

provided in Japanese standard JIS B 8616:2006, *Package Air Conditioners*, which is included as an informative reference in appendix B of AHRI 1230–2021, but not directly referenced within AHRI 1230–2021. Available at [www.jsajis.org/index.php?main\\_page=product\\_info&cPath=2&products\\_id=13290](http://www.jsajis.org/index.php?main_page=product_info&cPath=2&products_id=13290).

<sup>18</sup> AHRI 1230–2021 provides the following definitions for these terms in sections 3.29 and 3.30, respectively:

**Set Point Bias**—The difference between 80 °F and the nominal thermostat set point required for the thermostat to control for 80 °F sensed temperature at the sensed location.

**Set Point Offset**—The difference between the temperature indicated by a thermostat's temperature sensor and the actual temperature at the sensor's location.

bias and offset to ensure repeatable test results.

After setting initial indoor air temperature, including any adjustments to control for set point bias and offset, the CVP proceeds by incrementally decreasing the indoor room test chamber temperature while the VRF multi-split system setpoint is held constant. As the indoor room temperature approaches and eventually passes below the VRF multi-split system setpoint, the VRF multi-split system controls should begin to register that the cooling demand has been satisfied, and the system will begin to “unload,” meaning reduce capacity.<sup>19</sup> VRF multi-split systems typically unload by modulating component settings, including critical parameters, from the values used when providing full-load cooling capacity. During this unloading period and up until the time that the first indoor unit becomes thermally inactive, critical parameters are compared against the critical parameter values that are certified in the STI (validation criteria are discussed in a following section). Once the first indoor unit becomes thermally inactive, the indoor room dry bulb temperature continues decreasing until the indoor room reaches 77 °F.

## 3. Critical Parameter Definition

Section 3.10 of AHRI 1230–2021 defines the term “critical parameters” as “Key variables affecting the measured result,” meaning “[a]ny operating state or position for a component, either set manually or automatically by System Controls, which significantly impacts system performance.” Section 5.1.2.1 of AHRI 1230–2021 limits the range of critical parameters that can be manually adjusted to compressor speed(s), outdoor fan speed(s) and outdoor variable valve position(s). To be more explicit that “critical parameters” refers only to those parameters specified by Section 5.1.2.1 of AHRI 1230–2021, DOE is proposing not to reference the definition of critical parameters in Section 3.10 of AHRI 1230–2021, and instead to define the term “critical parameter(s)” in section 3 of appendix D1 as specifically referring to the following settings of modulating components of VRF multi-split air conditioners and heat pumps: Compressor speed(s), outdoor fan speed(s) and outdoor variable valve position(s). DOE has tentatively concluded that the proposed change to

<sup>19</sup> Figure C.1 in AHRI 1230–2021 displays an example schematic of the indoor dry bulb temperature in °F, compressor speed in Hz, and the number of thermally active indoor units over the duration of a CVP test.

the definition is editorial in nature and would not change or conflict with any testing provisions in AHRI 1230–2021.

*Issue 3:* DOE requests comment on its proposed definition for “Critical Parameter(s)”, which specifies the three parameters that can be manually controlled in testing per Section 5.1.2.1 of AHRI 1230–2021—compressor speed(s), outdoor fan speed(s), and outdoor variable valve position(s).

#### 4. Critical Parameter Variation and Budget Method

Appendix C of AHRI 1230–2021 includes methods for (1) calculating variation of critical parameters measured during the CVP from the values certified by the manufacturer in the STI (in Section C.4.4.2.3 of AHRI 1230–2021); and for (2) assessing whether the variation of critical parameters from certified values is within acceptable limits (in Section C.6 of AHRI 1230–2021).

Section C.4.4.2.3 of AHRI 1230–2021 provides instructions for calculating critical parameter variation during the CVP, specifying that at each measurement interval the instantaneous positions of all critical parameters are compared to the certified values. If multiple components corresponding to a single parameter are present (e.g., multiple compressors), the average position across all components is calculated at each measurement interval when determining variation. This difference is then divided by the maximum value observed during a full-load cooling CVP, to arrive at a normalized percent difference referred to as the “Parameter Percent Difference” or “PPD<sub>i,t</sub>” in AHRI 1230–2021.

Table C3 of AHRI 1230–2021 specifies weighting factors (referred to as “nominal point values”), which are multiplied by the PPD<sub>i,t</sub> for each critical parameter. This results in a “Points” value (calculated per equation C4 of AHRI 1230–2021) for each of the three critical parameters. These nominal point values reflect the relative sensitivity of IEER to changes in each critical parameter for VRF multi-split systems. The nominal point values specified in Table C3 of AHRI 1230–2021 are independent of the load point and whether the measured critical parameter is above or below the STI-certified value. Section C6.1.1 of AHRI 1230–2021 specifies that the Points values for each critical parameter are combined into a single measure called “RSS Points Total” using a root-sum-squared calculation. RSS Points Total represents an aggregated and normalized measure of deviation of all critical parameters from their certified values.

The verification criteria specified in Section C.6 of AHRI 1230–2021 for critical parameters measured during the CVP is a “budget method” that is dependent on cumulative variation across multiple critical parameters, instead of being solely dependent on the behavior of a single critical parameter. The budget method specified in Section C.6 of AHRI 1230–2021 applies a limit to the calculated RSS Points Total across all three critical parameters instead of applying individual tolerances to each individual critical parameter.<sup>20</sup> This method allows manufacturers flexibility in critical parameter control strategies while still constraining the overall variation in VRF multi-split system performance. The budget method can be applied the same way regardless of the number of critical parameters that a manufacturer certifies to their STI. For any critical parameter whose value is not certified in the STI, *i.e.*, not designated as being controlled during the IEER cooling tests, the deviation in that parameter will be calculated as zero for the duration of the CVP.

#### 5. Validation of Certified Critical Parameters

As discussed in the preceding section, AHRI 1230–2021 includes a budget method for calculating total variation in critical parameters from their certified values, expressed as a point total instead of measuring deviation individually for each critical parameter. Section C6.1.2 of AHRI 1230–2021 specifies that the certified critical parameters are valid if at least one measurement period of at least three minutes and a minimum of five sample readings exists where the average RSS Points Total is less than or equal to 70 points. Section C6.1.3 of AHRI 1230–2021 states that the manufacturer-specified critical parameters are invalid if no measurement period of at least three minutes and a minimum of five sample readings exists where the average RSS Points Total is less than or equal to 70 points. As discussed in section III.D.1 of this NOPR, the 70-point threshold was developed as part of AHRI 1230 Technical Committee meetings in which DOE presented anonymized and aggregated test data. As

<sup>20</sup>In addition to recommending inclusion of a CVP an appendix to the draft AHRI 1230, the VRF TP Term Sheet also recommended that DOE determine appropriate values for critical parameter tolerances using manufacturer-provided data. DOE subsequently conducted testing and sensitivity analysis of several VRF multi-split systems that were incorporated into the development of the “budget method” for CVP critical parameter verification specified in section C6 of AHRI 1230–2021.

part of those meetings, DOE presented its finding that a minimum point budget of 32 points was required to account for the lab-to-lab and test-to-test variability observed in critical parameter behavior between CVP runs for a single system. (EERE–2018–BT–STD–0003–0063 at p. 23). To allow for additional variability (e.g., sample-to-sample variability across the same VRF multi-split system and variability across different types of VRF multi-split systems), DOE recommended a 60-point budget to the Technical Committee. (*Id.*) The Technical Committee ultimately agreed to provide a 70-point budget in AHRI 1230–2021.

DOE has tentatively determined that the language in Sections C6.1.2 and C6.1.3 of AHRI 1230–2021 could be construed and applied in multiple manners, and that this could lead to differing test burdens. The phrase “a measurement period of at least three minutes and a minimum of five sample readings” could be understood to indicate a measurement period with no upper limit, potentially encompassing the entire duration of the CVP. This reading could be understood to require iterative calculations of time periods of varying lengths when validating critical parameters during the CVP (e.g., all three-minute periods, and all four-minute periods, and all five-minute periods). Taken to an extreme, this would result in thousands of calculations. Further, the language “where the average RSS Points Total is less than or equal to 70 points” does not indicate the specific procedure for determining the average value of RSS Points Total—*i.e.*, whether “average” refers to the average value within the measurement period or the cumulative average value of RSS points at the time of measurement.

Therefore, DOE proposes to clarify these provisions by providing additional instructions for validating critical parameters in § 429.134(s)(3)(ii). Specifically, DOE proposes to specify that the duration of the time period used for validating critical parameters must be whichever of the following is longer: Three minutes or the time period needed to obtain five sample readings while meeting the minimum data collection interval requirements of Table C2 of AHRI 1230–2021. DOE also proposes to specify that if at least one measurement period (with the aforementioned duration) exists before the first indoor unit goes thermally inactive that has an average RSS Points Total less than or equal to 70 points, then the certified critical parameter values are validated.

*Issue 4:* DOE seeks comment on its proposal for adding provisions at 10

CFR 429.134(s)(3)(ii) to clarify the language in Sections C6.1.2 and C6.1.3 of AHRI 1230–2021 for validating critical parameters during a CVP, particularly pertaining to the duration of the measurement period used for validating critical parameters.

#### 6. Determination of Alternate Critical Parameters

AHRI 1230–2021 indicates that certified critical parameters shall be consistent with a valid CVP to be used for IEER testing. Specifically, Section 5.1.2.1 of AHRI 1230–2021 specifies that operational settings for critical parameters must be with RSS Points Total  $\leq 70$  points, as defined in Section C6 of AHRI 1230–2021. However, AHRI 1230–2021 does not explicitly provide for alternate critical parameters for the IEER cooling test if the certified critical parameters are invalidated by the CVP.

If a CVP is not conducted, or if a CVP is conducted and the manufacturer-specified critical parameters are validated, DOE proposes that the critical parameter values certified in the STI be used as the initial control inputs when conducting the IEER cooling test at the corresponding full- or part-load cooling condition. DOE understands this to be consistent with Section 5.1.2 of AHRI 1230–2021. Because AHRI 1230–2021 does not explicitly address how alternate critical parameters are to be determined in the case of a failed CVP, additional provisions are needed so that alternate critical parameters are determined in a repeatable and representative manner. Therefore, if the CVP invalidates the manufacturer-specified critical parameters, DOE proposes at § 429.134(s)(3)(iii)(B) that alternate critical parameter values would be determined by averaging the value for each critical parameter from a specified time period of the CVP data, and that these alternate critical parameter values would be used for IEER testing in lieu of the certified critical parameter values. DOE proposes to use the same procedure for determination of measurement period length as is proposed in § 429.134(s)(3)(ii)(A) and discussed in section III.H.5 of this NOPR: The longer of three minutes or the time period needed to obtain five sample readings while meeting the minimum data collection interval requirements of Table C2 of AHRI 1230–2021.

DOE also proposes to select the measurement period for determining alternate critical parameter values (with the aforementioned duration) that has the lower average RSS points total over the selected period than over any other period in the CVP having the same

duration. If multiple such periods exist with the same RSS Points Total, DOE proposes to select the period closest to (but before) the time when the first indoor unit becomes thermally inactive ( $t_{\text{off}}$ ).

As described in section III.H.4 of this NOPR, Point Total represents an aggregated and normalized measure of deviation of all critical parameters from their certified values; therefore, by selecting a time period having the lowest average RSS Point Total, DOE would be selecting the period from the CVP where the alternate critical parameter values are most similar collectively to their certified values. However, DOE acknowledges that other approaches could be considered for selecting the measurement period for determination of alternate critical parameters from a CVP that has invalidated the critical parameter settings. For example, DOE could consider selecting the measurement period based on the behavior of compressor speed alone (e.g., the measurement period when deviation between certified and measured compressor speed is minimized), irrespective of other critical parameters. DOE could also consider selecting the measurement period based on test chamber conditions—e.g., the measurement period when the indoor test chamber first passes below the VRF multi-split system thermostat setpoint, or the measurement period just before the first indoor unit becomes thermally inactive.

*Issue 5:* DOE seeks comment on its proposal to specify at § 429.134(s)(3)(iii)(B) how, in the event of a CVP that has invalidated the critical parameter settings, alternate critical parameters would be determined to use as initial control inputs during the corresponding IEER full- or part-load cooling test. DOE requests feedback on the proposed method for selecting a measurement period on the basis of minimized average RSS points total, and also on its proposal for using an average of critical parameter measurements over the selected measurement period to calculate alternate critical parameters. DOE will further consider any alternate approaches suggested by comments in developing any final rule.

#### 7. When the CVP Is Conducted

While appendix C of AHRI 1230–2021 details how to conduct a CVP, it does not include instruction about the circumstances in which a CVP must be conducted. As noted previously in section III.D.1, DOE is proposing to adopt appendix C from AHRI 1230–2021 as a product-specific enforcement

provision, as opposed to adopting it in proposed appendix D1. In other words, DOE is not proposing that the CVP be conducted as part of an IEER test per the DOE test procedure. Instead, DOE is proposing to include the CVP (via reference to appendix C of AHRI 1230–2021) as part of DOE's product-specific enforcement provisions for VRF multi-split systems in the proposed § 429.134(s).

*Issue 6:* DOE requests comment on its proposal to incorporate the CVP into its product-specific enforcement provisions for VRF multi-split systems at § 429.134(s) instead of the test procedure for VRF multi-split systems in the proposed appendix D1.

In addition to its proposal to incorporate the CVP into its product-specific enforcement provisions, DOE is proposing to specify at § 429.134(s)(3) that DOE would conduct a CVP at all of the four IEER cooling test conditions, consistent with the Working Group intention for DOE to verify controls performance. (Docket No. EERE–2018–BT–STD–0003–0044 at p. 2) DOE also proposes to specify that the CVP would be performed first at the full-load cooling condition to determine maximum critical parameter values, before conducting the CVP at part-load cooling conditions because the maximum critical parameter values are used for calculating normalized deviation for CVPs at part-load conditions.

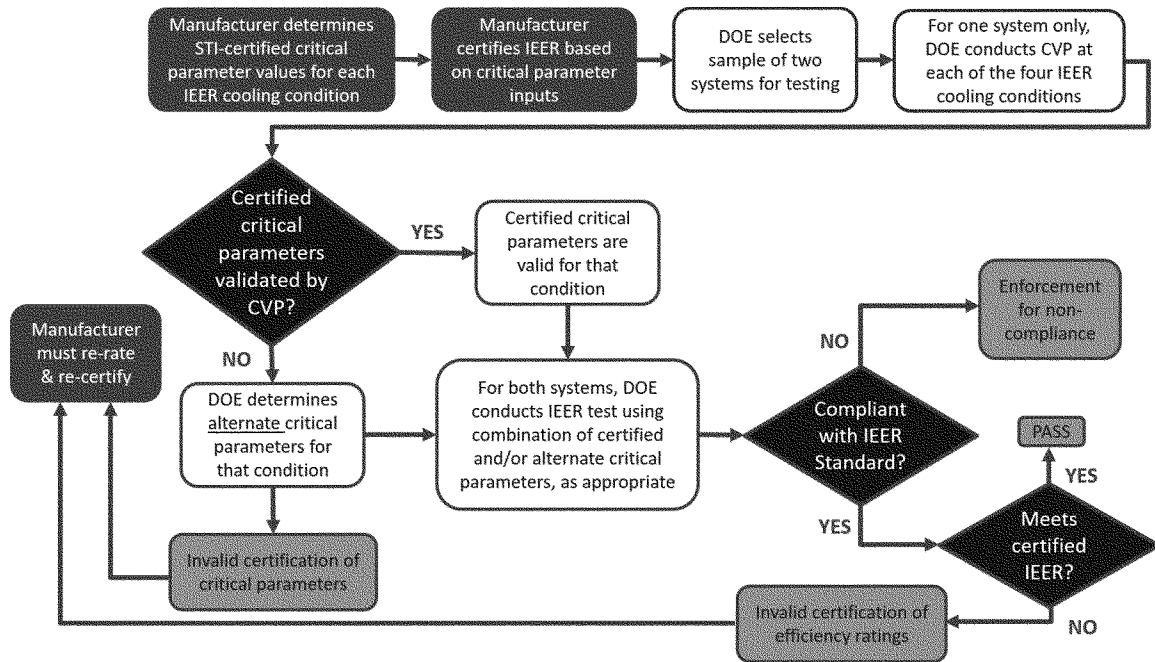
DOE also proposes to specify that the CVP would be performed on a single system from the two-system sample during enforcement testing. As discussed in section III.H.5 of this document, DOE's preliminary testing to evaluate repeatability and reproducibility of the CVP indicated that a minimum point budget of 32 points would be required to account for lab-to-lab and test-to-test variability observed in a single system. A 70-point budget could therefore accommodate an additional 48 points due to additional sources of variability, including sample-to-sample variability across the same VRF multi-split system. DOE has tentatively determined that the 70-point budget would be sufficient to account for all sources of variability during testing, such that conducting the CVP on a single system from the assessment/enforcement sample would yield results that are representative of both systems in the sample.

Should alternate critical parameters be required as a result of a CVP that has invalidated the critical parameter settings, DOE proposes that the alternate critical parameters would be determined from the CVP results of the single

system. These alternate critical parameters would be used for the corresponding IEER test (as specified in appendix D1) for all systems tested as part of the enforcement sample. Figure 1 shows a diagram illustrating DOE's proposed use of the CVP in its enforcement provisions for VRF multi-split systems.

*Issue 7:* DOE requests comment on its proposed approach for conducting the CVP during enforcement testing. Specifically, DOE requests comment on the proposal that DOE would conduct the CVP for a single system during enforcement testing in order to validate the certified critical parameters. If commenters believe conducting the CVP

on a single system as part of enforcement testing is insufficient, DOE requests test data demonstrating any issues with repeatability and reproducibility of the CVP that would indicate that the 70-point budget for critical parameter variation included in the industry consensus test procedure AHRI 1230–2021 is insufficient.



**Figure 1: Proposed Process for Conducting the CVP and IEER Testing for DOE Assessment and Enforcement Testing of VRF Multi-split Systems**

### I. Allowable Critical Parameter Adjustment

#### 1. Adjustment of Certified Critical Parameter Values

Section 6.3.3 of AHRI 1230–2021 provides instructions for adjusting critical parameters during the four specified full- or part-load IEER cooling test conditions in order to meet cooling capacity targets or to adjust SHR to below the allowable limit for the given IEER test point. Upon review of these provisions, DOE has tentatively determined that several amendments are required, and, therefore, proposes to include provisions to specify allowable critical parameter adjustments in section 5.2 of appendix D1 to subpart F of part 431.

Section 6.3.3.1.2 of AHRI 1230–2021 specifies that in cases for which the cooling capacity is above the upper tolerance, the critical parameters are

adjusted according to the instructions provided in the STI—specifically, the manufacturer may specify that any or all of the three critical parameters are to be adjusted in this scenario. Section 6.3.3.1.2 further specifies that when adjusting critical parameters, the allowable adjustment is constrained by deviation resulting in an RSS points total of 70 points or fewer. However, this section does not explicitly describe RSS points total, nor does it refer to the provisions in Sections C4.4.2.3 and C6 that specify measurement and calculation of RSS points total in the context of a CVP. To remedy this, DOE is proposing instructions for calculating critical parameter variation (in terms of RSS Points Total) for steady-state IEER cooling tests for which the measured capacity is above the target load fraction. These proposed instructions are consistent with the provisions in Section C4.4.2.3 of AHRI 1230–2021 for

calculating critical parameter variation in a CVP, except that DOE proposes to specify that the normalized deviation is to be measured between the certified STI values and the adjusted critical parameter values during steady-state IEER cooling tests, rather than between the certified STI values and an instantaneous measurement of critical parameter positions recorded during the CVP.

DOE is proposing two other clarifications to the provisions for critical parameter adjustment for IEER tests in section 5 of appendix D1. First, DOE is proposing to clarify that upward adjustments to compressor speed (*i.e.*, when the measured cooling capacity is too low or when the SHR is above the allowable limit) are not constrained by a budget on RSS Points Total. This is consistent with AHRI 1230–2021, which does not require an RSS Points Total budget be used for these adjustments.



Second, DOE proposes to clarify the instructions for calculating critical parameter variation in the scenario where a VRF multi-split system contains multiple components corresponding to a single critical parameter (e.g., multiple compressors). Specifically, DOE proposes to replace all references to “multiple instances of a single parameter” with “multiple components corresponding to a critical parameter”. This proposal is consistent with AHRI 1230–2021, but clarifies the wording because “multiple instances” could be interpreted to refer to multiple time points for a single component, rather than multiple components at a given time, as intended.

To the extent that the industry test procedure does not provide the specifications regarding adjustment of critical parameters as proposed, DOE tentatively finds that the industry test procedure would not ensure that measured results are comparative. Due to the potential variation resulting from the absence of the specification, the industry test procedure would not ensure that the results reflect the equipment’s representative average energy efficiency or energy use. As such, DOE has initially determined, supported by clear and convincing evidence, that in the absence of the proposed specifications for adjustment of critical parameters the industry test procedure would not meet the statutory requirements of 42 U.S.C. 6314(a)(2)–(3), and, therefore, is proposing the supplemental specification.

*Issue 8:* DOE seeks comment on its proposed provisions (to clarify similar provisions in AHRI 1230–2021) in section 4 of the proposed appendix D1 to subpart F of part 431 that specify allowable adjustments to critical parameters for IEER tests. Specifically, DOE requests feedback on its proposal to specify, for IEER tests for which the tested capacity is above the target capacity, calculation of normalized critical parameter variation during the adjustment process (similar to the calculation specified for the CVP in Section C4.4.2.3 of AHRI 1230–2021).

## 2. Adjustment of Alternate Critical Parameter Values

As described in section III.H.5 of this NOPR, in the case of critical parameter values being invalidated by the CVP conducted as part of DOE assessment or enforcement testing, DOE is proposing to clarify how alternate critical parameters would be determined for use as control inputs for a steady-state cooling test conducted at the corresponding IEER test condition (instead of using the critical parameter

values certified in the STI). In such a case, it may still be necessary to adjust the alternate critical parameter values (determined in the CVP) in order to meet tolerances for capacity and SHR limits for the IEER test. Accordingly, DOE is proposing to include provisions at § 429.134(s)(3)(iii)(B)(3) to indicate that in the case of invalidated critical parameter values in which DOE determines alternate critical parameters, additional adjustments to the alternate critical parameters are allowed to comply with capacity and/or SHR requirements. Specifically, DOE proposes to reference the methods for adjustment of critical parameters from section 5.2 of appendix D1 to subpart F of part 431 with two modifications. First, DOE proposes that in such a case, references in section 5.2 of appendix D1 to critical parameter values certified in the STI would be replaced with references to alternate critical parameter values determined under the CVP. Second, in such a case DOE proposes to determine the maximum operating state of each critical parameter (referred to as  $CP_{Max}$  in AHRI 1230–2021 and the proposed regulatory text) based on the maximum operating state observed during a CVP conducted at 100 percent cooling load conditions, instead of using the information certified to the STI for the 100 percent cooling load point.

*Issue 9:* DOE seeks comment on the proposed provisions at § 429.134(s)(3)(iii)(B)(3) regarding allowable adjustment (to meet tolerances for capacity and SHR limits for an IEER test) of alternate critical parameter values determined by DOE in the event of a CVP that has invalidated the critical parameter settings.

## J. Certification, Compliance and Enforcement

### 1. Represented Values

#### a. Tested Combination

In the July 2017 ASHRAE TP RFI, DOE noted that Section 6.2.1 of the 2015 draft version of AHRI 1230 included the following specification for tested combinations for systems with capacities greater than or equal to 65,000 Btu/h: Testing with standard 4-way ceiling cassette indoor units with the smallest coil volume per nominal capacity for non-ducted indoor units, and testing with mid-static units for ducted indoor units. 82 FR 34427, 34447. DOE also stated that there is a range of ductless indoor unit styles, which may have a range of efficiency characteristics, and that ducted systems may serve a range of ESPs. 82 FR 34427, 34447–34448 (July 25, 2017). DOE requested comment and data on

variation of system efficiency related to indoor unit styles (both for ducted and non-ducted indoor units). *Id.* at 82 FR 34448. DOE also requested data on the most prevalent style and static pressure classification (low-static, mid-static, or conventional-static) of ducted units. *Id.*

AHRI, Carrier, Lennox, Mitsubishi, and Goodman commented that the 4-way ceiling cassette and mid-static unit styles specified by the 2015 draft version of AHRI 1230 for the tested combination of non-ducted and ducted indoor units, respectively, are the most common. (AHRI, No. 11 at p. 36; Carrier, No. 6 at pp. 22; Lennox, No. 8 at p.10; Mitsubishi, No. 10 at p.3; Goodman, No. 14 at p.7) AHRI additionally stated that it had recently surveyed its members and confirmed that these types of indoor units are the most prevalent in the industry. (AHRI, No.11 at p 36)

Section 6.2 of AHRI 1230–2021 specifies tested combination requirements for VRF multi-split systems that generally align with the specifications from AHRI 1230–2015 draft, with a few amendments. First, AHRI 1230–2021 amends the instructions for determining which indoor units to use if the primary option is not offered by the manufacturer. Instead of relying on the “highest sales volume” designation for determining the alternate indoor units to compose the tested combination, Section 6.2.1.1 of AHRI 1230–2021 specifies the following hierarchy of non-ducted indoor units: Compact 4-way ceiling cassette, three-way cassette, two-way cassette, wall-mounted, one-way cassette, floor-mounted, and ceiling-suspended. Section 6.2.1.2 of AHRI 1230–2021 specifies that the tested combination must use indoor units (with the lowest normalized coil volume) only from the indoor unit model family with the highest static capabilities. Second, AHRI 1230–2021 adds tested combination instructions for the new SDHV indoor unit model family. Specifically, Section 6.2.1.3 of AHRI 1230–2021 specifies that small-duct high velocity (SDHV)<sup>21</sup> tested combinations must use indoor units

<sup>21</sup> Section 3.17.3 of AHRI 1230–2021 defines the SDHV indoor unit model family to include indoor units that produce at least 1.2 inches water column of ESP when operated at the full-load cooling airflow of at least 220 scfm per rated ton of nominal cooling capacity. These criteria align with DOE’s definition for “small-duct high velocity system” included in appendices M and M1 to subpart B of part 430, for consumer central air conditioners. The definition in Section 3.17.3 of AHRI 1230–2021 further provides additional clarification that the SDHV indoor unit model family is a separate indoor unit model family type that is not one of the ducted indoor unit model families.

with the lowest normalized coil volume/motor efficiency.

Although the tested combination is relevant to determination of represented values, rather than the method of test, DOE has tentatively determined that the AHRI 1230–2021 provisions regarding tested combination are appropriate. Therefore, for ease of use, DOE is proposing to incorporate by reference Section 6.2.1 of AHRI 1230–2021 in appendix D1 to subpart F of part 431.

#### b. Represented Values for Indoor Unit Combinations

DOE includes requirements for determining represented values for all commercial HVAC equipment (including VRF multi-split systems) in § 429.43(a). Represented values for each VRF multi-split system basic model must be determined either through testing in conjunction with the applicable sampling provisions in § 429.43(a)(1), or through application of an AEDM in accordance with the provisions in § 429.43(a)(2). In addition, DOE's current test procedure incorporates by reference Section 5.2 of ANSI/AHRI 1230–2010, which includes requirements for determining represented values of VRF multi-split systems through testing. However, DOE does not currently specify in § 429.43(a) any provisions specific to VRF multi-split systems for determining represented values.

In considering possible options for determining represented values for VRF multi-split systems, DOE reviewed AHRI 1230–2021, which includes provisions for determining represented values of VRF multi-split systems through testing in Section 7. Section 7.2.5 specifies provisions pertaining to represented values of different combinations of indoor unit types. Specifically, for basic models that include only non-ducted or only ducted indoor unit combinations, Section 7.2.5.1 states that ratings are determined by testing at least two complete system samples of the same combination of indoor units. Section 7.2.5.2 states that for manufacturers who offer both non-ducted combinations and ducted combinations, ratings are determined by testing two or more combinations of indoor units with each outdoor unit, with one combination consisting of only non-ducted indoor units and the second combination consisting of only ducted indoor units. Additionally, Section 7.2.5.2.3 specifies that the rating given to any untested system with a mix of ducted and non-ducted units is to be set equal to the average of the ratings for the non-ducted and ducted tested combinations.

As discussed in section III.J.1.a of this NOPR, Section 6.2 of AHRI 1230–2021 includes provisions regarding tested combinations of three overall types: Non-ducted, ducted, and SDHV. However, Section 7.2.5 of AHRI 1230–2021 addresses only ducted and non-ducted combinations, and does not include provisions for determining represented values through testing of VRF multi-split systems with SDHV indoor units. While Section 7.2.2 of AHRI 1230–2021 states that mixed ratings must be determined by the straight average of two individual systems' rated values containing homogenous kinds of indoor units, including non-ducted, ducted, and SDHV, Section 7.2.5 addresses mixed ratings of only non-ducted and ducted tested combinations.

DOE proposes to adopt requirements at § 429.43(a)(3)(iv)(B) for determining represented values for VRF multi-split systems that are consistent with the requirements from Section 7.2.5 of AHRI 1230–2021, but with additional detail to address SDHV indoor units and with language more appropriate for DOE's certification regulations. If a basic model includes only non-ducted indoor units, only ducted indoor units, or only SDHV indoor units, DOE proposes that the manufacturer must determine the represented values for the basic model by testing a sample of non-ducted tested combinations, ducted tested combinations, or SDHV tested combinations, as applicable, according to the sampling plan in § 429.43(a)(1), or by application of an AEDM as specified in §§ 429.43(a)(2) and 429.70. If a basic model includes more than one type of indoor unit combination—ducted, non-ducted, and/or SDHV—DOE proposes that the manufacturer must determine separate represented values for each type of indoor unit combination. DOE further proposes to specify that the represented values must be determined either through application of an AEDM, following provisions from §§ 429.43(a)(2) and 429.70, or through testing a minimum of a single tested combination for each type of indoor unit combination included in that basic model.

Additionally, DOE proposes that a manufacturer may determine represented values for optional “mixed” representations of any two required representations (*i.e.*, ducted, non-ducted, and/or SDHV) for a basic model by calculating the mean of the two required representations. For example, if a basic model includes representations for ducted and non-ducted indoor unit combinations, an optional “mixed ducted/non-ducted”

representation would be determined by averaging the ducted representation and the non-ducted representation.

These proposals would only be required when certifying to amended standards in terms of IEER. DOE has tentatively determined that the proposed provisions would not be unduly burdensome to manufacturers. DOE typically requires manufacturers to follow the sampling plan in § 429.43(a)(1) for all representations based on testing (*i.e.*, a minimum of two test samples per represented value), rather than distributing the sampling plan testing requirements across a basic model with multiple representations (*i.e.*, the proposed approach for requiring only a single tested system per representation). However, DOE has tentatively concluded that the test burden for VRF multi-split systems is significantly higher than that of other commercial AC equipment, which warrants the proposed reduced testing requirements for determining represented values. VRF multi-split systems are tested with up to twelve indoor units connected in a single refrigerant circuit, which requires additional set-up and commissioning time to install refrigerant piping and ensure proper charge compared to testing other kinds of commercial HVAC equipment. This often requires VRF multi-split systems to be tested using 2 indoor test chambers in order to accommodate all 12 indoor units, while other types of commercial HVAC equipment only ever require a single indoor test chamber.

Further, DOE understands that most manufacturers of VRF multi-split systems offer both ducted and non-ducted indoor units for most basic models; therefore, for most basic models with representations based on testing, manufacturers would still be testing at least two samples (*e.g.*, one with non-ducted indoor units and one with ducted indoor units). Consequently, DOE has tentatively concluded that the proposed reduced testing requirements will reduce test burden while being reasonably designed to produce test results which reflect energy efficiency of the VRF multi-split systems during a representative average use cycle. Of note, DOE's enforcement regulations in subpart C to part 429 apply to a basic model, not to a representation. Therefore, the entire basic model would be considered non-compliant if any of the representations for that basic model were found to be invalid.

*Issue 10:* DOE requests comment on its proposals for determining represented values for VRF multi-split system basic models with different

indoor unit combinations. In particular, DOE seeks feedback on its proposal to allow for optional mixed representations of any two required representations (*i.e.*, ducted, non-ducted, and/or SDHV) for a basic model by calculating the mean of the two required representations.

### c. Multiple Refrigerants

DOE recognizes that some commercial package air conditioning and heating equipment may be sold with more than one refrigerant option (*e.g.*, R-410A or R-407C). Typically, manufacturers specify a single refrigerant in their literature for each unique model, but in its review, DOE has identified at least one commercial package air conditioning and heating equipment manufacturer that provides two refrigerant options under the same model number. The refrigerant chosen by the customer in the field installation may impact the energy efficiency of a unit. For this reason, DOE is proposing representation requirements applicable to models approved for use with multiple refrigerants. These proposals would only be required when certifying to amended standards in terms of IEER.

Use of a refrigerant that requires different hardware (such as R-407C as compared to R-410A) would represent a different basic model, and according to the current CFR, separate representations of energy efficiency are required for each basic model. In contrast, some refrigerants (such as R-422D, R-427A) would not require different hardware, and a manufacturer may consider them to be the same basic model, per DOE's current definition for "basic model" at § 431.92. In the latter case of multiple refrigerant options that do not require different hardware, DOE proposes at § 429.43(a)(3)(iv)(A) that a manufacturer must determine the represented values (*e.g.*, IEER, COP, and cooling capacity) for that basic model based on the refrigerant(s)—among all refrigerants listed on the unit's nameplate—that result in the lowest cooling efficiency. These represented values would apply to the basic model for all refrigerants specified by the manufacturer as appropriate for use, regardless of which refrigerant may actually be used in the field.

*Issue 11:* DOE requests comment on its proposal regarding representations for VRF multi-split system basic models approved for use with multiple refrigerants.

### d. Confidence Limit

DOE's regulations for commercial HVAC (including VRF multi-split systems) at § 429.43(a)(1) include

requirements for determining represented values based on a sample of tested units. Specifically, represented values for energy efficiency of a basic model of VRF must be less than or equal to the mean of the sample of tested units or the lower 95 percent confidence limit, whichever is lower.

In a comment submitted in response to the July 2017 ASHRAE TP RFI, Lennox recommended that DOE harmonize the certification criteria in 10 CFR 429.43 for "commercial air conditioning products" with that for central air conditioners, a consumer product, in 10 CFR 429.16 that uses only a 90 percent confidence interval. (Lennox, No. 8 at p. 6). In particular, Lennox stated that commercial equipment currently has a more stringent confidence limit of 95 percent and asserted that current testing technology does not support this level of precision. (*Id.*) Lennox's recommendation for a narrower confidence interval would decrease the level of certainty that a tested efficiency would be greater than the rated efficiency, assuming the same test sample size.

Other manufacturers did not raise concerns regarding the confidence limit required for sampling commercial package air conditioners and heat pumps (including VRF multi-split systems), and Lennox did not provide data regarding variability of units in production and testing to support a different confidence limit. Absent more specific information or data regarding the stringency of the confidence level, DOE is not proposing to adopt the suggested change.<sup>22</sup>

## 2. Certification Reporting Requirements

DOE specifies certification reporting requirements for VRF multi-split systems in 10 CFR 429.43(b). Certification reporting requirements for VRF multi-split systems include both public equipment-specific information and STI. In this NOPR, DOE is proposing changes to certification reporting requirements to enable testing to the updated industry test procedure AHRI 1230-2021 and to align with DOE's proposals regarding determination of represented values for VRF multi-split systems, discussed previously in section III.J.1. DOE is

<sup>22</sup> DOE notes that it has previously requested data regarding the variability of units of small, large, and very large air-cooled commercial package air conditioning and heating equipment in production and testing to enable DOE to review and make any necessary adjustments to the specified confidence levels. See 80 FR 79655, 79659 (Dec. 23, 2015). However, DOE did not receive any relevant data in response to that request.

proposing to amend the certification reporting requirements for VRF multi-split systems to address the IEER metric but is not proposing amendments to the current standards (in terms of EER). Therefore, the certification reporting requirement proposals would only apply when certifying to a future IEER standard; existing certification reporting requirements used when certifying to the current EER standards would not change unless DOE conducts a subsequent rulemaking amending the standard to rely on the IEER metric.

### a. Certification Requirements

In this NOPR, DOE proposes to amend the reporting requirements consistent with the proposed amendments to the test procedure and metric. When certifying a VRF multi-split system to standards in terms of IEER, manufacturers would be required to report the following public information in addition to the current certification requirements:

- IEER values (replacing the current certification requirement for EER values).
- The rated heating capacity, in Btu/h.
- The indoor unit combination used to determine the represented values for an individual combination (*i.e.*, a non-ducted, ducted, SDHV, or mixed indoor unit combination), and all outdoor and indoor unit model numbers used to compose the tested combination. This proposal corresponds to the proposal regarding represented values for indoor unit combinations discussed in section III.J.1.b of this NOPR.
- The refrigerant used to determine the represented values for a basic model, per the proposal discussed in section III.J.1.c of this NOPR that manufacturers must determine all represented values for a basic model (*e.g.*, EER, IEER, COP, and cooling capacity) based on the refrigerant listed on the unit's nameplate that results in the lowest cooling efficiency.

Regarding heating capacity, DOE is proposing to include rated heating capacity in Btu/h (as measured according to the proposed amended test procedure in Appendix D1) as a public reporting requirement for all VRF multi-split heat pump systems (and not for VRF multi-split air conditioners). DOE's current certification reporting requirements for VRF multi-split systems at 10 CFR 429.43(b)(2) specify that manufacturers must include the rated cooling capacity (in Btu/h) and the rated cooling efficiency (EER, in Btu/W\*h) in their public certification reports. For VRF multi-split heat pumps, the public certification report must also include the rated heating

efficiency (COP, in W/W), but the rated heating capacity is required to be reported as part of the STI instead of in the public certification report. DOE is proposing to require rated heating capacity as part of the public certification report instead of the STI to align with the certification approach for cooling capacity. As discussed in section III.E.1, manufacturers already test and rate VRF multi-split systems in the AHRI *Directory of Certified Product Performance* for VRF multi-split systems.<sup>23</sup> AHRI requires that manufacturers publicly provide the rated heating capacity of VRF multi-split systems at two separate outdoor temperature conditions, including at the 47 °F outdoor temperature condition used in the proposed DOE test procedure. Because all VRF multi-split system manufacturers are AHRI members, DOE tentatively concludes that a requirement to report the rated heating capacity would not increase the reporting burden.

*Issue 12:* DOE requests comment on its proposed certification reporting requirements for VRF multi-split systems.

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For VRF multi-split systems, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific public certification reporting requirements specified at § 429.43(b)(2). DOE is proposing to amend the product-specific public certification requirements for VRF multi-split systems in this notice. To help interested parties better appreciate these proposed changes, a draft certification template is included in the docket, which can be viewed as described in the Docket section at the beginning of this document and will be accessible on the DOE website.

#### b. Supplemental Testing Instructions

The STI generally provides equipment-specific instruction to allow for third-party testing of equipment. DOE has tentatively determined that updates in the industry test procedure AHRI 1230–2021 require corresponding amendments to the STI certification requirements to test VRF multi-split systems. DOE proposes to add or amend the following items at § 429.43(b)(4) as part of the required STI when certifying a VRF multi-split system to amended standards in terms of IEER, as these

items would be needed for IEER testing per the proposed test procedure at appendix D1:

- Identification of the indoor units to be thermally active for each IEER test point;
- The rated indoor airflow for the full-load cooling, full-load heating, and all part-load cooling tests (for each indoor unit), in standard cubic feet per minute (scfm);
- The indoor airflow-control setting to be used in the full-load cooling test and the indoor airflow control setting to be used in the full-load heating test (for each indoor unit);
- For water-cooled units, the rated water flow rate in gallons per minute (gpm);
- System start-up or initialization procedures, including conditions and durations;
- The duration of the compressor break-in period. (Existing requirements in § 431.96(c) require manufacturers to include this information in the test data underlying the certified ratings that must be maintained according to 10 CFR 429.71);
- Instructions for adjustment of critical parameters to meet capacity targets and/or SHR limits, including hierarchy for adjusting;
- The layout of the system set-up for testing (previously required upon request) including a piping diagram, setup instructions for indoor units and outdoor units, charging instructions, a control wiring diagram, and identification of the location of each critical parameter;
- Explicitly providing that the nominal cooling capacity and nominal heating capacity (if applicable) in British thermal units per hour (Btu/h) must be certified for each outdoor unit and indoor unit;
- Requiring testing instructions for conducting testing for all indoor unit combinations with distinct represented values within a basic model, as applicable. (This proposal corresponds to the proposal regarding represented values for indoor unit combinations discussed in section III.J.1.b of this NOPR);
- Removing the current requirement to report compressor frequency set points and instead require reporting operational settings for all critical parameters to be manually controlled for each of the four IEER cooling test conditions and for the COP heating test;
- Removing the reporting requirement regarding whether the model will operate at test conditions without manufacturer programming, because the proposed VRF enforcement provisions (discussed in section III.J of

this NOPR) allow for a manufacturer representative to be on site for DOE testing;

- Removing the reporting requirement for rated static pressure, which is unnecessary because AHRI 1230–2021 includes ESP requirements for testing; and
- The frequency of oil-recovery cycles.

Regarding the nominal cooling and heating capacity, DOE is also proposing to clarify that manufacturers must certify the nominal cooling capacity and nominal heating capacity (as applicable) for each indoor unit and outdoor unit as a part of their supplemental testing instructions. The existing STI requirements for VRF multi-split systems require reporting of “nominal cooling capacity” and “rated heating capacity”, but do not specify whether these values need to be reported for the entire VRF multi-split system or for each indoor and outdoor unit. As described in section III.J.2.a, DOE is proposing to require public reporting of rated heating capacity for VRF multi-split heat pumps as part of the certification report. In sum, these proposals would require that manufacturers publicly certify the rated cooling capacity and rated heating capacity (as applicable) for each basic model of VRF multi-split system, and then separately certify (in supplemental testing instructions) the nominal cooling capacity and nominal heating capacity (as applicable) for each indoor unit and outdoor unit.

Regarding the CVP, DOE also proposes to require reporting as part of the STI the following manufacturer-specified input conditions for conducting a CVP at each of the four IEER cooling test conditions: The required thermostat set points to ensure control for 80 °F dry-bulb temperature when accounting for set point bias, the starting indoor dry-bulb temperature, and the indoor dry-bulb temperature ramp rate. This proposal corresponds to the proposal to adopt the CVP (as specified in Appendix C of AHRI 1230–2021) in § 429.134(s), as discussed in section III.H of this NOPR.

Regarding specific components, as discussed in section III.G of this NOPR, DOE is proposing an STI reporting requirement, corresponding to the proposed representation requirements for specific components at 10 CFR 429.43(a)(4). Specifically DOE proposes that the manufacturer must certify for which, if any, specific components (as listed in 10 CFR 429.43(a)(4)(i)) the following provisions are applicable: (1) The indoor unit model(s) in a tested combination within a basic model

<sup>23</sup> The AHRI directory for VRF multi-split systems is available at: [www.ahridirectory.org/NewSearch?programId=72&searchTypeId=3](http://www.ahridirectory.org/NewSearch?programId=72&searchTypeId=3).

include both individual indoor unit models distributed in commerce with the specific component and individual indoor unit models distributed in commerce without the specific component; (2) at least one of the individual indoor unit models distributed in commerce without the specific component is otherwise identical to any given individual indoor unit model distributed in commerce with the specific component; and (3) represented values for the tested combination are based on performance of individual indoor unit models distributed in commerce without the specific component.

The proposed STI certification requirements provide information that is necessary for testing VRF multi-split systems consistent with the updated industry test procedure AHRI 1230–2021. Further, section D3 of informative appendix D of AHRI 1230–2021 includes a list of recommended items to be included in STI when testing to AHRI 1230–2021, and most of the STI certification requirements proposed in this NOPR are included in the section D3 list. Therefore, DOE has tentatively concluded that the proposed STI certification requirements are warranted for testing according to the latest industry test procedure for VRF-multi-split systems and would not impose significant burden to manufacturers.

*Issue 13:* DOE requests comment on its proposed STI reporting requirements for VRF multi-split systems.

### 3. Models Required for AEDM Validation

As discussed, manufacturers of VRF multi-split systems may determine represented values through testing according to the sampling plan in § 429.43(a)(1), or by application of an AEDM as specified in §§ 429.43(a)(2) and 429.70. DOE proposes to adopt the following AEDM validation requirements for VRF multi-split systems to be similar to the sampling plan requirements for tested units, discussed in section III.J.3 of this NOPR.

If a manufacturer makes representations for only a single type of indoor unit combination (*i.e.*, ducted, non-ducted, or SDHV indoor unit combinations) within or across all its basic models to which the AEDM applies, DOE proposes that the manufacturer must validate the AEDM by testing at least a single tested combination of that type of indoor unit combination for each of the two selected basic models.

If a manufacturer makes representations for two types of indoor unit combinations (*i.e.*, ducted, non-

ducted, and/or SDHV indoor unit combinations) within or across all its basic models to which the AEDM applies, DOE proposes that the manufacturer must test at least: (1) A single tested combination of a selected basic model as the first of those two types of indoor unit combination, and (2) a single tested combination of a different selected basic model as the second of those two types of indoor unit combination. For example, if an AEDM is validated through testing of two basic models (Model A and Model B) and Model A and Model B both include ducted and non-ducted indoor unit combinations, validation testing would need to be conducted on Model A with a ducted tested combination and Model B with non-ducted tested combination, or vice versa.

If a manufacturer makes representations for all three types of indoor unit combinations (*i.e.*, ducted, non-ducted, and SDHV indoor unit combinations) within or across all its basic models to which the AEDM applies, DOE proposes that the manufacturer must test at least a single tested combination of a selected basic model as a non-ducted tested combination and a single tested combination of a different selected basic model as a ducted tested combination. These proposals retain DOE's existing requirements for VRF multi-split systems at § 429.70(c)(iv) to test two basic models in order to validate an AEDM.

DOE has tentatively concluded that the proposed AEDM validation requirements are consistent with AHRI 1230–2021, because they ensure that values developed with an AEDM conform to the results of AHRI 1230–2021. These proposals would only be required when certifying to amended standards in terms of IEER.

*Issue 14:* DOE requests comment on its proposal to amend its requirements for AEDM validation for VRF multi-split systems.

### 4. Manufacturer Involvement

DOE does not allow manufacturer involvement in assessment and enforcement testing of most regulated equipment to ensure objectivity and repeatability. However, in acknowledgement of the uniquely complicated nature of VRF multi-split systems, the current DOE test procedure includes allowances in § 431.96(f) for limited manufacturer involvement during assessment and enforcement testing. 77 FR 28927, 28946. Specifically, a manufacturer's representative is allowed to witness assessment and enforcement testing,

inspect set-up, discuss set-up with a DOE representative, and adjust modulating components to achieve steady-state operation. § 431.96(f). In AHRI 1230–2021, allowable manufacturer involvement is prescribed in Sections 5.1.2 and 6.3.3.

Section 5.1.2 states that manufacturer authorized personnel may support commissioning of the VRF multi-split system being tested (*i.e.*, ensuring that the system is properly installed and functioning as expected). Section 5.1.2.1 states that operational settings for critical parameters may be manually adjusted and shall be as specified in the STI but does not specify which party is responsible for setting the critical parameters during testing. Section 5.1.2.2 states that all compressors shall initially operate at the setting(s) provided in the STI, which is redundant with Section 5.1.2.1. Section 5.1.2.3 states that all control settings must be set by a member of the laboratory and states that all control settings must remain unchanged for all load points once system setup has been completed.

Section 6.3.3 specifies allowable critical parameter adjustments for the purposes of meeting capacity targets and/or SHR limits during IEER cooling tests. However, Section 6.3.3 includes unclear and contradictory language regarding who performs critical parameter adjustments. Specifically, Section 6.3.3 describes critical parameter “adjustments” as being performed by laboratory personnel, but also specifies that when a steady-state test is conducted in a third-party laboratory, a manufacturer's representative may “set” critical parameter values under the supervision of the third-party laboratory (using the service tool to monitor critical parameters). Further, Section 6.3.3 uses several different terms when describing who takes certain actions as part of adjusting critical parameters, for which it is unclear if any difference in meaning is intended: “the lab”, “a member of the laboratory”, “lab personnel”, and “the third party laboratory”.

Given the importance of explicitly specifying the specific actions the manufacturer's representative can take as part of assessment and enforcement testing of VRF multi-split systems, DOE does not propose to adopt Sections 5.1.2 and 6.3.3 of AHRI 1230–2021, and instead proposes to specify in § 429.134(s)(2) provisions for allowable manufacturer involvement during DOE assessment and enforcement testing. These provisions are generally consistent with Sections 5.1.2 and 6.3.3 of AHRI 1230–2021, but assign more

precisely the actions that a manufacturer's representative may take.

Specifically, DOE is proposing to clarify that a manufacturer's representative is allowed to support commissioning of the VRF multi-split system and to witness DOE assessment or enforcement testing, which is consistent with the current Federal test procedure. For all cooling and heating tests, DOE proposes that all control settings other than critical parameters must be set by a member of the third-party laboratory; a manufacturer's representative may initially set all critical parameters to their certified values. For IEER cooling tests only, DOE proposes to specify that if additional adjustments to critical parameters are required for meeting capacity targets and/or SHR limits (see section III.I of this NOPR), a manufacturer's representative may make such adjustments in accordance with section 5.1 of appendix D1 using a proprietary control tool. DOE further proposes that initial setting and any additional critical parameter adjustments performed by a manufacturer's representative during IEER testing must be monitored by third-party laboratory personnel using a service tool. For the heating test, DOE proposes that the manufacturer's representative would not be permitted to make any critical parameter adjustments during testing and would only be allowed to initially set critical parameters to their certified values. These proposals are a departure from the current DOE test procedure (which allows manufacturer control of modulating components for the purposes of reaching steady-state operation) and instead align with the latest industry test procedure AHRI 1230–2021 (with minor clarifications in wording, as discussed).

In the case that a manufacturer is not present for assessment or enforcement testing, third-party laboratory personnel may need a manufacturer's control tool to set critical parameters to their initial settings or make additional adjustments required by the test procedure. Accordingly, DOE is proposing to amend its test notice requirements for VRF multi-split systems at § 429.110(b)(1)(iv) to require manufacturers to include a means of control to set and adjust critical parameters with all systems provided for enforcement testing. Correspondingly, DOE is proposing provisions for VRF multi-split systems at § 429.104(b) that would require manufacturers to provide a means of control for assessment testing, although manufacturers would not be required to provide the VRF multi-split system for

assessment testing. This proposal would enable the laboratory staff to perform IEER and heating tests in the event that a manufacturer's representative is not available for assessment and/or enforcement testing. DOE also proposes that, if a manufacturer's representative is not present for testing, a member of the third-party laboratory shall set and adjust critical parameter values in accordance with section 5.1 of appendix D1 using the means of control provided by the manufacturer in response to the test notice.

*Issue 15:* DOE seeks comment on its proposal to require a means of control to be provided by the manufacturer for assessment and enforcement testing.

Furthermore, AHRI 1230–2021 only partially addresses allowable manufacturer involvement during the CVP. Specifically, section C3.1 provides instructions that control settings must be identical to those used during the steady-state IEER tests, except that control settings for critical parameters shall not be controlled during the CVP. However, Appendix C to AHRI 1230–2021 does not provide instruction for which parties may interact with the unit under test, and under what circumstances. Also, the wording “identical to those used during the steady-state IEER tests” could be interpreted to mean that steady-state IEER tests must be conducted prior to a CVP, which should not be necessary. To address these issues, DOE proposes to specify in its product-specific enforcement provisions at § 429.134(s)(2) that a manufacturer's representative is allowed to support commissioning of the VRF multi-split system and witness the CVP. DOE also proposes to specify that the control settings used during a CVP must be set by a member of the third-party laboratory and must be set per the provisions in section 5.1 of appendix D1 to subpart F of part 431 (except for critical parameters, which must operate automatically from the system controls and must not be controlled or adjusted at any point during the CVP).

DOE has tentatively concluded that these proposals would ensure the consistency and objectivity of the CVP. Furthermore, these proposals are consistent with AHRI 1230–2021, because they ensure the manufacturer's representative cannot set or adjust any parameters in the CVP that AHRI 1230–2021 specifies shall operate under commands from system controls during the CVP. Additionally, the proposed language to set control settings for the CVP (except critical parameters) in accordance with section 5.1 of appendix D1 to subpart F of part 431 ensures that

the same control settings (except critical parameters) are used between the CVP and IEER cooling tests, without requiring IEER cooling tests to be conducted before a CVP.

*Issue 16:* DOE seeks comment on its proposal to establish in 10 CFR 429.134(s)(2) provisions regarding allowable manufacturer involvement during assessment and enforcement testing, which are consistent with AHRI 1230–2021. DOE also seeks comment on its proposal for allowable manufacturer involvement during the CVP.

##### 5. Certified Critical Parameter Operational Settings

As described in section III.J.2.b of this NOPR, DOE is proposing to require that manufacturers certify in the STI the operational settings for all critical parameters to be manually controlled for each of the four IEER cooling test conditions and for the COP heating test. Because the control settings for critical parameters affect the operating state of the VRF multi-split system, the measured performance is likely to vary significantly based on the critical parameter settings selected. For example, in preliminary testing, DOE determined that a 10 percent change in compressor speed resulted in an average difference of approximately 5 EER points (in Btu/W\*hr) at each IEER load point. (EERE–2018–BT–STD–0003–0063 at p. 15). Due to the relationship of critical parameter operational settings to the measured performance of VRF multi-split systems, DOE is making several proposals related to the certified critical parameters.

As discussed in section III.H.5, DOE is proposing to use the CVP during assessment and enforcement testing to verify that the certified critical parameter values for IEER cooling tests are valid. The certified critical parameter values used for the heating test are not subject to validation from a CVP, as the CVP is applicable only for cooling operation. In addition to its proposals governing the use of the CVP, DOE is proposing to add a certification reporting provision specific to VRF multi-split systems in § 429.43(b)(5). This proposal specifies that if a manufacturer becomes aware that any of the certified operational settings for the critical parameters are determined to be invalid according to the results of a CVP, whether that CVP be performed by the manufacturer or another party, the manufacturer would be required to re-certify the operational settings of those critical parameters for all affected basic models, as well as re-rate and re-certify the affected basic models. Notably, DOE is not proposing a requirement that

manufacturers conduct the CVP as part of certification to DOE.

In addition to its proposal to require re-certification and re-rating of VRF multi-split systems in the event a manufacturer becomes aware that any of its certified operational settings for critical parameters are invalid according to a CVP, DOE also proposes to amend the enforcement testing requirements at § 429.110(a) to state that DOE may initiate enforcement testing for VRF multi-split systems if DOE has reason to believe that the model is not in compliance, has invalid certified operational settings for critical parameter values, or has an otherwise invalid certified rating. Under this proposal DOE may initiate enforcement testing to investigate the certified critical parameter values and the associated IEER rating for VRF multi-split systems based on any of the following events:

1. DOE conducts CVP during assessment testing that results in invalidated operational settings for critical parameters for a basic model;
2. DOE conducts assessment testing for IEER and COP that creates reason to believe the basic model would be non-compliant with energy conservation standards or have an otherwise invalid rating;
3. Another party conducts a CVP that results in invalidated operational settings for critical parameters for a basic model and the manufacturer fails to recertify that basic model;
4. A CVP is conducted (by DOE or another party) that results in invalidated operational settings for critical parameters for a basic model, and DOE finds that a similar basic model from the same manufacturer relies on similar certified operational settings for critical parameters.

DOE may examine multiple sources including, but not limited to, publicly available information and the STI when determining whether there is reason to proceed to enforcement testing. DOE notes that upon initiation of enforcement testing, DOE will issue a test notice to the manufacturer to acquire the selected models and means of control, and will conduct a CVP on the certified operational settings of critical parameters before proceeding to IEER testing.

*Issue 17:* DOE requests comment on its proposed approaches for certification and for enforcement testing in the event that a VRF multi-split system has invalid certified operational settings for critical parameter values.

#### 6. Enforcement Sampling Plan

DOE's regulations at § 429.110(e) include provisions for selection of units for enforcement testing. Specifically, § 429.110(e)(2) states that for commercial air conditioners and heat pumps (which includes VRF multi-split systems), DOE will use an initial sample size of not more than four (4) units when determining a basic model's compliance with applicable energy conservation standards. As described in section III.J.1.b of this NOPR, DOE has tentatively determined that the testing of VRF multi-split systems is significantly more involved than the testing of other commercial HVAC equipment. The proposed test procedure would incorporate instructions for setting the positions of multiple critical parameters during testing, which requires additional setup as compared to other kinds of commercial HVAC equipment. DOE estimates the cost to test VRF multi-split systems to be between \$7,500 and \$27,000, depending on size and configuration of the system (not including costs of copper piping or refrigerant). Additionally, DOE is proposing in this NOPR to incorporate the CVP into its enforcement regulations for VRF multi-split systems at § 429.134(s), which would add approximately eight hours of test time at each of the four IEER load conditions during enforcement testing.

Because of the involved nature of testing VRF multi-split systems, it would be unlikely that DOE would conduct assessment testing or enforcement testing on the maximum number of units currently specified (*i.e.*, four). In order to reflect what would be the expected practice, DOE proposes to amend its enforcement sampling plan requirements specific to VRF multi-split systems to require a sample size of two VRF multi-split systems. The process for determining compliance with energy conservation standards would be unchanged in this proposal, *i.e.*, a compliance determination would be made for VRF multi-split systems using the sampling plan found in appendix B to subpart C of part 429 with a first sample size of  $n_1 = 2$  VRF multi-split systems.

*Issue 18:* DOE requests comment on its proposed enforcement sampling plan for VRF multi-split systems.

#### K. Test Procedure Costs

EPCA requires that the test procedures for commercial package air conditioning and heating equipment, which includes VRF multi-split systems, be those generally accepted industry testing procedures or rating

procedures developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B)) In this NOPR, DOE proposes to amend the current test procedure for VRF multi-split systems at § 431.96 by (1) incorporating by reference AHRI 1230–2021 and ANSI/ASHRAE 37–2009; and (2) establishing provisions for determining IEER for VRF multi-split systems. DOE also proposes to amend its certification, compliance, and enforcement (“CCE”) provisions for VRF multi-split systems to provide information that is necessary for testing VRF multi-split systems consistent with the updated industry test procedure AHRI 1230–2021. Most significantly, these proposed changes include the incorporation of the CVP from AHRI 1230–2021 into DOE's product-specific enforcement provisions at § 429.134, as well as accompanying certification requirements at § 429.43.

DOE has tentatively determined that these proposed amended test procedures would be representative of an average use cycle and would not be unduly burdensome for manufacturers to conduct. The proposed appendix D, measuring EER and COP per ANSI/AHRI 1230–2010, does not contain any changes from the current Federal test procedure, and, therefore, would not require retesting solely as a result of DOE's adoption of this proposed amendment to the test procedure, if made final. The proposed test procedure in appendix D1, measuring IEER and COP per AHRI 1230–2021, would lead to an increase in cost from appendix D testing. DOE estimates that the cost for third-party lab testing according to the proposed appendix D1 for measuring IEER and COP to be \$7,500–\$27,000 per VRF multi-split heat pump system, depending on size and configuration.

As discussed in section II, the proposed test procedure provisions regarding IEER would not be mandatory unless DOE amends the energy conservation standards for VRF multi-split systems based on IEER. But, DOE has tentatively determined that the proposed test procedure amendments would not be expected to increase the testing burden on VRF multi-split

system manufacturers. All VRF multi-split system manufacturers are AHRI members; DOE is referencing the prevailing industry test procedure that was established for use in AHRI's certification program (which DOE presumes will be updated to include IEER in terms of the latest industry test procedure AHRI 1230–2021). Therefore, DOE expects that manufacturers will begin testing using the test methods in AHRI 1230–2021, and the testing burden will already be incurred from AHRI members participating in AHRI's certification program. Additionally, DOE has tentatively determined that the test procedure amendments, if finalized, would not require manufacturers to redesign any of the covered equipment, would not require changes to how the equipment is manufactured, and would not impact the utility of the equipment.

*Issue 19:* DOE requests comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically DOE's initial conclusion that the proposed DOE test procedure amendments, if finalized, would not increase testing burden on VRF multi-split system manufacturers, compared to current industry practice as indicated by AHRI 1230–2021.

#### *L. Reserved Appendices for Test Procedures for Commercial Air Conditioning and Heating Equipment*

DOE is proposing to relocate and centralize the current test procedures for VRF multi-split systems to a new appendix D to subpart F of part 431. As proposed, appendix D would not amend the current test procedures. Appendix D would continue to reference ANSI/AHRI 1230–2010 and provide instructions for determining EER and COP. Correspondingly, DOE is proposing to update the existing incorporation by reference of ANSI/AHRI 1230–2010 at § 431.95 so that the incorporation by reference applies to appendix D. Appendix D would also centralize the additional test provisions currently applicable under § 431.96—§ 431.96(c) through (f). VRF multi-split systems would be required to be tested according to appendix D, absent amendments to the applicable energy conservation standards to rely on the IEER metric.

DOE also proposes to adopt the updated version of AHRI 1230, AHRI 1230–2021, including the IEER metric in a new appendix D1 to subpart F of part 431. VRF multi-split systems would not be required to test according to appendix D1 until compliance is required with amended energy conservation standards that rely on the

IEER metric, should DOE adopt such standards.

#### *M. Compliance Date*

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made in the context of certification and on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 360 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1))

EPCA also provides an allowance for individual manufacturers to petition DOE for an extension if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6314(d)(2)) To receive such an extension should DOE finalize an amended test procedure, petitions must be filed with DOE no later than 60 days before the end of the 360-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

#### **IV. Procedural Issues and Regulatory Review**

##### *A. Review Under Executive Order 12866*

The Office of Management and Budget (“OMB”) has determined that this test procedure rulemaking does not constitute a “significant regulatory action” under section 3(f) of Executive Order (“E.O.”) 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (“OIRA”) in OMB.

##### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: [www.energy.gov/gc/office-general-counsel](http://www.energy.gov/gc/office-general-counsel).

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis of this certification is set forth in the following paragraphs.

DOE is proposing amendments to the test procedures for VRF multi-split systems to satisfy its statutory requirements under EPCA to remain consistent with updates to the applicable industry test procedure and to re-evaluate its test procedures at least once every 7 years. (42 U.S.C. 6314(a)(4)(A) and (B); 42 U.S.C. 6314(1)(A))

DOE proposes to update § 431.96 “Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,” as follows: (1) Incorporate by reference AHRI 1230–2021 and ANSI/ASHRAE 37–2009 (including Errata Sheet issued October 3, 2016); and (2) establish provisions for determining IEER for VRF multi-split systems. DOE proposes to add new appendices D and D1 to subpart F of part 431, both entitled “Uniform test method for measuring the energy consumption of variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 Btu/h),” (“appendix D” and “appendix D1”, respectively). The current DOE test procedure for VRF multi-split systems would be relocated to appendix D without change, and the new test procedure adopting AHRI 1230–2021 would be established in appendix D1 for determining IEER. Compliance with appendix D1 would not be required until compliance is required with amended energy conservation standards for VRF multi-split systems that rely on IEER, should DOE adopt such standards.

DOE also proposes to update its certification, compliance, and enforcement (“CCE”) provisions for VRF multi-split systems to provide information that is necessary for testing VRF multi-split systems consistent with the updated industry test procedure AHRI 1230–2021. Most significantly, these proposed changes include the incorporation of the controls verification procedure (“CVP”) from AHRI 1230–2021 into DOE's product-specific enforcement provisions at § 429.134, as well as accompanying certification requirements at § 429.43. DOE is also proposing to amend the sampling size requirements for enforcement from “a maximum of not



more than four units” to specifying testing of two units.

The proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. For manufacturers of VRF multi-split systems, the Small Business Administration (“SBA”) has set a size threshold, which defines those entities classified as “small businesses” for the purposes of the statute. In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. The equipment covered by this rule is classified under North American Industry Classification System (“NAICS”) code 333415,<sup>24</sup> “Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.” DOE used the SBA’s small business size standards to determine whether any small entities would be subject to the requirements of the rule. DOE identified manufacturers using DOE’s Compliance Certification Database<sup>25</sup> and the AHRI database.<sup>26</sup> DOE identified ten original equipment manufacturers (“OEMs”) of the covered equipment.

In reviewing the ten OEMs, DOE did not identify any companies that met the SBA criteria for a small entity because they surpassed the SBA’s employee threshold. Therefore, DOE tentatively concludes that the proposed rule would not have a significant economic impact on a substantial number of small entities. DOE welcomes public comment on this certification conclusion.

*Issue 20:* DOE requests comment on its assessment that there are no small businesses that are OEMs of VRF multi-split systems.

*Issue 21:* DOE requests comment on its conclusion that the proposed rule would not have significant impacts on a substantial number of small manufacturers.

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 VRF multi-split systems 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 procedure, including any amendments adopted for that test procedure. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including VRF multi-split systems. (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”), and 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.

Under EPCA, DOE’s energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. For covered equipment, relevant provisions of the Act include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

DOE’s certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of

10 CFR part 429, and 10 CFR part 431. Certification reports provide DOE and consumers with comprehensive, up-to-date efficiency information and support effective enforcement.

DOE requires manufacturers or their party representatives to prepare and submit certification reports and compliance statements using DOE’s electronic Web-based tool, the CCMS, which is the primary mechanism for submitting certification reports to DOE. CCMS currently has product and equipment specific templates which manufacturers are required to use when submitting certification data to DOE. DOE believes the availability of electronic filing through the CCMS system reduces reporting burdens, streamlines the process, and provides DOE with needed information in a standardized, more accessible form. This electronic filing system also ensures that records are recorded in a permanent, systematic way.

DOE is proposing to amend the reporting requirements for VRF multi-split systems as discussed in section III.J.2. DOE sent a revised information collection approval to OMB under the existing Control Number 1910–1400. The revision only reflects the changes proposed in this rulemaking as an amendment to the existing information collection.

DOE is proposing that respondents must submit electronic forms using DOE’s online CCMS. DOE’s CCMS is publicly accessible at [www.regulations.doe.gov/ccms](http://www.regulations.doe.gov/ccms), and includes instructions for users, registration forms, and the product-specific reporting templates required for use when submitting information to CCMS.

DOE has tentatively determined that the proposed amendments would not impose additional costs for manufacturers of VRF multi-split systems because manufacturers of this equipment are already submitting certification reports to DOE and as part of testing to the proposed amended test procedure (which references the updated industry test procedure AHRI 1230–2021) should have readily available the information that DOE is proposing to collect as part of this rulemaking. DOE also tentatively determines that manufacturers would rely on existing record keeping systems to maintain the additional information reported.

*Issue 22:* DOE invites public comment on: (1) Whether the proposed information collection requirements are necessary for the performance of DOE’s functions, including whether the information will have practical utility;

<sup>24</sup> The size standards are listed by NAICS code and industry description and are available at: [www.sba.gov/document/support-table-size-standards](http://www.sba.gov/document/support-table-size-standards) (Last accessed on July 16, 2021).

<sup>25</sup> DOE’s Compliance Certification Database is available at: [www.regulations.doe.gov/ccms](http://www.regulations.doe.gov/ccms) (last accessed May 10, 2021).

<sup>26</sup> The AHRI Database is available at: <https://www.ahridirectory.org/> (last accessed May 10, 2021).

(2) the accuracy of DOE's estimates of the burden of the proposed information collection requirements; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection requirements on respondents.

Comments should be addressed to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street NW, Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the contact person at the address given in the **FOR FURTHER INFORMATION CONTACT** section of this notice of proposed rulemaking. Interested persons may obtain a copy of the DOE's Paperwork Reduction Act Submission to OMB from the contact person named in this notice of proposed rulemaking. 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 NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for VRF multi-split systems. 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 (Aug. 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 has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed 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, the proposed 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 proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at [www.energy.gov/gc/office-general-counsel](http://www.energy.gov/gc/office-general-counsel). DOE examined this proposed 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 proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *I. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859

(March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### *J. Review Under Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at [www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf](http://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf). DOE has reviewed this proposed 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 proposed 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 proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of VRF multi-split systems is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it

been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

#### *L. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95-91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; "FEAA") Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission ("FTC") concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for VRF multi-split systems would incorporate testing methods contained in certain sections of the following commercial standards: AHRI 1230-2021, ASHRAE 37-2009. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.*, whether they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of this test procedure on competition, prior to prescribing a final rule.

#### *M. Description of Materials Incorporated by Reference*

In this NOPR, DOE proposes to incorporate by reference the following test standards:

(1) The test standard published by AHRI titled "2021 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment," AHRI Standard 1230-2021. AHRI Standard 1230-2021 is an industry-accepted test procedure for measuring the performance of VRF multi-split systems. AHRI Standard 1230-2021 is available on AHRI's website [www.ahrinet.org/search-standards.aspx](http://www.ahrinet.org/search-standards.aspx).

(2) The test standard published by ASHRAE, titled "Methods of Testing for Rating Electrically Driven Unitary Air-

Conditioning and Heat Pump Equipment," ANSI/ASHRAE Standard 37-2009 (including Errata Sheet issued October 3, 2016). ANSI/ASHRAE Standard 37-2009 is an industry-accepted test procedure that provides a method of test for many categories of air conditioning and heating equipment. ANSI/ASHRAE Standard 37-2009 is available on ANSI's website at [webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FASHRAE+Standard+37-2009](http://webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FASHRAE+Standard+37-2009).

(3) The test standard published by AHRI titled, ANSI/AHRI Standard 1230-2010, "2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-split Air-Conditioning and Heat Pump Equipment," approved August 2, 2010 and updated by addendum 1 in March 2011. ANSI/AHRI Standard 1230-2010 is an industry-accepted test procedure for measuring the performance of VRF multi-split systems. ANSI/AHRI Standard 1230-2010 is available on AHRI's website [www.ahrinet.org/search-standards.aspx](http://www.ahrinet.org/search-standards.aspx).

## **V. Public Participation**

### *A. Participation in the Webinar*

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, it will be cancelled.

Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: [https://www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=71&action=viewlive](https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=71&action=viewlive). Participants are responsible for ensuring their systems are compatible with the webinar software.

### *Procedure for Submitting Prepared General Statements for Distribution*

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov). Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

### *B. Conduct of the Webinar*

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar/public meeting will be conducted in an informal, conference style. DOE will present a summary of the proposals, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from

those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar/public meeting will be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

### *C. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

*Submitting comments via www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information ("CBI")). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the

Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

#### *D. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

*Issue 1:* DOE requests feedback on its proposal to adopt IEER as determined under AHRI 1230–2021 in the Federal test procedure for VRF multi-split systems. DOE also seeks comment on its proposed amendment to the definition for IEER at § 431.92 to distinguish between the test procedures for ACUACs and VRF multi-split systems.

*Issue 2:* DOE requests comment on its proposals in Appendix D1, section 429.43, and section 429.134 regarding specific components.

*Issue 3:* DOE requests comment on its proposed definition for “Critical Parameter(s)”, which specifies the three parameters that can be manually controlled in testing per Section 5.1.2.1 of AHRI 1230–2021—compressor speed(s), outdoor fan speed(s), and outdoor variable valve position(s).

*Issue 4:* DOE seeks comment on its proposal for adding provisions at 10 CFR 429.134(s)(3)(ii) to clarify the language in Sections C6.1.2 and C6.1.3 of AHRI 1230–2021 for validating critical parameters during a CVP, particularly pertaining to the duration of the measurement period used for validating critical parameters.

*Issue 5:* DOE seeks comment on its proposal to specify at 10 CFR 429.134(s)(3)(iii)(B) how, in the event of a CVP that has invalidated the critical parameter settings, alternate critical parameters would be determined to use as initial control inputs during the corresponding IEER full- or part-load cooling test. DOE requests feedback on the proposed method for selecting a measurement period on the basis of minimized average RSS points total, and also on its proposal for using an average of critical parameter measurements over the selected measurement period to calculate alternate critical parameters. DOE will further consider any alternate approaches suggested by comments in developing any final rule.

*Issue 6:* DOE requests comment on its proposal to incorporate the CVP into its product-specific enforcement provisions for VRF multi-split systems at 10 CFR 429.134(s) instead of the test procedure

for VRF multi-split systems in the proposed appendix D1.

*Issue 7:* DOE requests comment on its proposed approach for conducting the CVP during enforcement testing. Specifically, DOE requests comment on the proposal that DOE would conduct the CVP for a single system during enforcement testing in order to validate the certified critical parameters. If commenters believe conducting the CVP on a single system as part of enforcement testing is insufficient, DOE requests test data demonstrating any issues with repeatability and reproducibility of the CVP that would indicate that the 70-point budget for critical parameter variation included in the industry consensus test procedure AHRI 1230–2021 is insufficient.

*Issue 8:* DOE seeks comment on its proposed provisions (to clarify similar provisions in AHRI 1230–2021) in section 4 of the proposed appendix D1 to subpart F of part 431 that specify allowable adjustments to critical parameters for IEER tests. Specifically, DOE requests feedback on its proposal to specify, for IEER tests for which the tested capacity is above the target capacity, calculation of normalized critical parameter variation during the adjustment process (similar to the calculation specified for the CVP in Section C4.4.2.3 of AHRI 1230–2021).

*Issue 9:* DOE seeks comment on the proposed provisions at § 429.134(s)(3)(iii)(B)(3) regarding allowable adjustment (to meet tolerances for capacity and SHR limits for an IEER test) of alternate critical parameter values determined by DOE in the event of a CVP that has invalidated the critical parameter settings.

*Issue 10:* DOE requests comment on its proposals for determining represented values for VRF multi-split system basic models with different indoor unit combinations. In particular, DOE seeks feedback on its proposal to allow for optional mixed representations of any two required representations (*i.e.*, ducted, non-ducted, and/or SDHV) for a basic model by calculating the mean of the two required representations.

*Issue 11:* DOE requests comment on its proposal regarding representations for VRF multi-split system basic models approved for use with multiple refrigerants.

*Issue 12:* DOE requests comment on its proposed certification reporting requirements for VRF multi-split systems.

*Issue 13:* DOE requests comment on its proposed STI reporting requirements for VRF multi-split systems.

*Issue 14:* DOE requests comment on its proposal to amend its requirements for AEDM validation for VRF multi-split systems.

*Issue 15:* DOE seeks comment on its proposal to require a means of control to be provided by the manufacturer for assessment and enforcement testing.

*Issue 16:* DOE seeks comment on its proposal to establish in 10 CFR 429.134(s)(2) provisions regarding allowable manufacturer involvement during assessment and enforcement testing, which are consistent with AHRI 1230–2021. DOE also seeks comment on its proposal for allowable manufacturer involvement during the CVP.

*Issue 17:* DOE requests comment on its proposed approaches for certification and for enforcement testing in the event that a VRF multi-split system has invalid certified operational settings for critical parameter values.

*Issue 18:* DOE requests comment on its proposed enforcement sampling plan for VRF multi-split systems.

*Issue 19:* DOE requests comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically DOE's initial conclusion that the proposed DOE test procedure amendments, if finalized, would not increase testing burden on VRF multi-split system manufacturers, compared to current industry practice as indicated by AHRI 1230–2021.

*Issue 20:* DOE requests comment on its assessment that there are no small businesses that are OEMs of VRF multi-split systems.

*Issue 21:* DOE requests comment on its conclusion that the proposed rule would not have significant impacts on a substantial number of small manufacturers.

*Issue 22:* DOE invites public comment on: (1) Whether the proposed information collection requirements are necessary for the performance of DOE's functions, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden of the proposed information collection requirements; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection requirements on respondents.

## **VI. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this proposed rule.

### **List of Subjects**

#### *10 CFR Part 429*

Administrative practice and procedure, Confidential business

information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

#### 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

#### Signing Authority

This document of the Department of Energy was signed on November 29, 2021, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register Liaison Officer** has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 30, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of chapter II, of title 10, Code of Federal Regulations as set forth below:

#### **PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT**

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.4 by:

- a. Revising paragraph (a); and
- b. Redesignating paragraph (c)(2) as paragraph (c)(3) and adding new paragraph (c)(2).

The revision and addition read as follows.

#### **§ 429.4 Materials incorporated by reference.**

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, [Building Technologies Program], Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202)–586–9127, [Buildings@ee.doe.gov](mailto:Buildings@ee.doe.gov), <https://www.energy.gov/eere/buildings/building-technologies-office>, and may be obtained from the other sources in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

\* \* \* \* \*

(c) \* \* \*

(2) AHRI Standard 1230–2021, (“AHRI 1230–2021”), 2021 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment, IBR approved for §§ 429.43 and 429.134.

\* \* \* \* \*

■ 3. Amend § 429.43 by:

- a. Revising the introductory text of paragraphs (a), (a)(1)(ii)(A), and (a)(1)(ii)(B);
- b. Adding paragraphs (a)(3) through (5);
- c. Revising paragraphs (b)(2)(xi) and (xii);
- d. Removing paragraph (b)(2)(xiii);
- e. Redesignating paragraphs (b)(2)(xiv) and (xv) as (b)(2)(xiii) and (xiv), respectively;
- f. Revising paragraphs (b)(4)(vii) and (viii);
- g. Removing paragraph (b)(4)(ix);
- h. Redesignating paragraphs (b)(4)(x) through (b)(4)(xiv) as (b)(4)(ix) through (b)(4)(xiii), respectively; and
- i. Adding paragraph (b)(5).

The revisions and additions read as follows.

#### **§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.**

(a) Determination of represented values. Manufacturers must determine the represented values, which include the certified ratings, for each basic model of commercial HVAC equipment

either by testing, in conjunction with the applicable sampling provisions, or by applying an AEDM.

(1) \* \* \*

(ii) \* \* \*

(A) Any represented value of energy consumption or other measure of energy use of a basic model, or of a tested combination for variable refrigerant flow multi-split air conditioners and heat pumps certified to standards in terms of IEER as provided at paragraph (a)(3)(iv)(B) of this section, for which consumers would favor lower values shall be greater than or equal to the higher of:

\* \* \* \* \*

(B) Any represented value of energy efficiency or other measure of energy consumption of a basic model, or of a tested combination for variable refrigerant flow multi-split air conditioners and heat pumps certified to standards in terms of IEER as provided at paragraph (a)(3)(iv)(B) of this section, for which consumers would favor higher values shall be less than or equal to the lower of:

\* \* \* \* \*

(3) *Product-specific provisions for determination of represented values.*

(i)–(iii) [Reserved]

(iv) Variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with cooling capacity less than 65,000 btu/h). When certifying to standards in terms of IEER, the following provisions apply.

(A) If a basic model is distributed in commerce and approved for use with multiple refrigerants, a manufacturer must determine all represented values for that basic model (for example, IEER, COP, cooling capacity, and heating capacity) based on the refrigerant that results in the lowest cooling efficiency. A refrigerant is considered approved for use if it is listed on the nameplate of the outdoor unit. Per the definition of basic model in 10 CFR 431.92, use of a refrigerant that requires different hardware (*i.e.*, compressors, heat exchangers, or air moving systems that are not the same or comparably performing), would represent a different basic model, and separate representations would be required for each basic model.

(B) Represented values for different indoor unit combinations must be determined per the following provisions.

(1) If a basic model includes only one type of indoor unit combination (*i.e.*, ducted, non-ducted, or SDHV), a manufacturer must determine the represented values for that basic model in accordance with the sampling plan

set forth in § 429.11 and paragraph (a)(1) of this section if the represented values are determined through testing, or in accordance with the provisions for applying an AEDM set forth in paragraph (a)(2) of this section and § 429.70.

(2) If a basic model includes more than one type of indoor unit combination (*i.e.*, ducted, non-ducted, and/or SDHV), a manufacturer must determine separate represented values for each type of indoor unit combination. If the represented values are determined through testing, a manufacturer must test, at a minimum, a single tested combination for each type of indoor unit combination included in that basic model. A manufacturer may alternatively determine separate represented values

through application of an AEDM as set forth in paragraph (a)(2) of this section and § 429.70. A manufacturer may also determine optional “mixed” representations by calculating the mean value across any two required representations described in this paragraph (*i.e.*, a representation for “mixed ducted/non-ducted” would be determined by averaging the ducted representation and the non-ducted representation, a representation for “mixed ducted/SDHV” would be determined by averaging the ducted representation and the SDHV representation, and a representation for “mixed non-ducted/SDHV” would be determined by averaging the non-ducted representation and the SDHV representation).

(4) *Determination of represented values for individual models with specific components for VRF multi-split systems.*

(i) If a manufacturer distributes in commerce indoor unit model(s) in a tested combination within a basic model with one of the components listed in the following table, determination of represented values is dependent on the selected grouping of individual indoor unit models into a tested combination within a basic model, as indicated in paragraphs (a)(4)(ii) through (v) of this section. For the purposes of this paragraph, “otherwise identical” means differing only in the presence of specific components listed in table 1 to paragraph (a)(4)(i).

TABLE 1 TO PARAGRAPH (a)(4)(i)

Component	Description
Air economizers .....	An automatic system that enables a cooling system to supply and use outdoor air to reduce or eliminate the need for mechanical cooling during mild or cold weather.
Dehumidification Components .....	An assembly that reduced the moisture content of the supply air through moisture transfer with solid or liquid desiccants.

(ii) If the indoor unit model(s) in a tested combination within a basic model include only individual indoor unit models distributed in commerce without a specific component listed in paragraph (a)(4)(i) of this section, the manufacturer must determine represented values for the tested combination based on performance of individual indoor unit models distributed in commerce without the component.

(iii) If the indoor unit model(s) in a tested combination within a basic model include only individual indoor unit models distributed in commerce with a specific component listed in paragraph (a)(4)(i) of this section, the manufacturer must determine represented values for the tested combination based on performance of individual indoor unit models with the component present (and consistent with any component-specific test provisions specified in section 6 of appendix D1 to subpart F of part 431).

(iv) If the indoor unit model(s) in a tested combination within a basic model—

(A) Include both individual indoor unit models distributed in commerce with a specific component listed in paragraph (a)(4)(i) of this section and individual indoor unit models distributed in commerce without that specific component, and

(B) None of the individual indoor unit models distributed in commerce without the specific component are otherwise identical to any individual indoor unit model distributed in commerce with that specific component, the manufacturer must consider the performance of individual indoor unit models with the component present when determining represented values for the tested combination within a basic model (and consistent with any component-specific test provisions specified in section 6 of appendix D1 to subpart F of part 431).

(v) If the indoor unit model(s) in a tested combination within a basic model—

(A) Include both individual indoor unit models distributed in commerce with a specific component listed in paragraph (a)(4)(i) of this section and individual indoor unit models distributed in commerce without that specific component, and

(B) At least one of the individual indoor unit models distributed in commerce without the specific component is otherwise identical to any given individual indoor unit model distributed in commerce with the specific component, the manufacturer may determine represented values for the tested combination within a basic model either:

(1) Based on performance of individual indoor unit models

distributed in commerce without the specific component, or

(2) Based on performance of individual indoor unit models with the specific component present (and consistent with any component-specific test provisions specified in section 6 of appendix D1 to subpart F of part 431).

(vi) In any of the cases specified in paragraphs (a)(4)(ii) through (v) of this section, the represented values for a tested combination within a basic model must be determined in accordance with paragraph (a)(3) of this section, through either testing or an AEDM.

(5) *Heat Recovery.* For basic models of VRF multi-split systems distributed in commerce with heat recovery components, the manufacturer must determine represented values for the basic model based on performance of an individual model distributed in commerce with heat recovery components.

(b) \* \* \*

(2) \* \* \*

(xi) Variable refrigerant flow multi-split air-cooled air conditioners (except those with rated cooling capacity less than 65,000 Btu/h):

(A) When certifying compliance with an EER standard: The energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/Wh)), rated cooling capacity in British thermal units per hour (Btu/h), and the type(s) of heating

used by the basic model (*e.g.*, electric, gas, hydronic, none).

(B) When certifying compliance with an IEER standard, the following must be certified for each tested combination as required under paragraph (a)(3)(iv)(B) of this section: The integrated energy efficiency ratio (IEER) in British thermal units per Watt-hour (Btu/Wh); the rated cooling capacity in British thermal units per hour (Btu/h); whether the represented values are for a non-ducted, ducted, or SDHV tested combination, or for a mixed representation of any two of the tested combinations; and the outdoor unit(s) and indoor units identified in the tested combination. The following must be certified for each basic model: The type(s) of heating used (*i.e.*, electric, gas, hydronic, none); and the refrigerant used to determine the represented values.

(xii) Variable refrigerant flow multi-split heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h):

(A) When certifying compliance with an EER standard: The energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/Wh)), the coefficient of performance (COP), rated cooling capacity in British thermal units per hour (Btu/h), and the type(s) of heating used by the basic model (*e.g.*, electric, gas, hydronic, none).

(B) When certifying compliance with an IEER standard, the following must be certified for each tested combination as required under paragraph (a)(3)(iv)(B) of this section: The integrated energy efficiency ratio (IEER) in British thermal units per Watt-hour (Btu/Wh); the coefficient of performance (COP); the rated cooling capacity in British thermal units per hour (Btu/h); the rated heating capacity (Btu/h); whether the represented values are for a non-ducted, ducted, or SDHV tested combination, or for a mixed representation of any two of the tested combinations; and the outdoor unit(s) and indoor units identified in the tested combination. The following must be certified for each basic model: the type(s) of heating used (*i.e.*, electric, gas, hydronic, none); and the refrigerant used to determine the represented values.

\* \* \* \* \*

(4) \* \* \*

(vii) Variable refrigerant flow multi-split air-cooled air conditioners (except those with rated cooling capacity less than 65,000 Btu/h):

(A) When certifying compliance with an EER standard: The nominal cooling capacity in British thermal units per hour (Btu/h); outdoor unit(s) and indoor units identified in the tested

combination; components needed for heat recovery, if applicable; rated airflow in standard cubic feet per minute (scfm) for each indoor unit; rated static pressure in inches of water; compressor frequency set points; required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model. Additionally, upon DOE request, the manufacturer must provide a layout of the system set-up for testing including charging instructions consistent with the installation manual.

(B) When certifying compliance with an IEER standard (for requirements in this list pertaining to or affected by indoor units, the requirements must be certified for each tested combination as required under paragraph (a)(3)(iv)(B) of this section): The nominal cooling capacity in British thermal units per hour (Btu/h) for each indoor and outdoor unit; identification of the indoor units to be thermally active for each IEER test point; the rated indoor airflow for the full-load cooling and all part-load cooling tests (for each indoor unit) in standard cubic feet per minute (scfm); the indoor airflow-control setting to be used in the full-load cooling test (for each indoor unit); system start-up or initialization procedures, including conditions and duration; compressor break-in period duration; the frequency of oil recovery cycles; operational settings for all critical parameters to be controlled at each of the four IEER cooling test conditions; required dip switch/control settings; identification of any system control device required for testing; a hierarchy of instructions for adjustment of critical parameters to reduce cooling capacity during IEER cooling tests (to be used if, using initial critical parameter settings, the measured cooling capacity is more than 3 percent above the target cooling capacity); any additional testing instructions if applicable; and if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the

model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating. Instructions for conducting a controls verification procedure (as described in Appendix C of AHRI 1230-2021, (incorporated by reference, see § 429.4)) at each of the four IEER cooling test conditions must also be provided, including: The required thermostat setpoints to ensure control for 80 °F dry-bulb temperature when accounting for set point bias, the starting indoor dry-bulb temperature, and the indoor dry-bulb temperature ramp rate (R2). Additionally, the manufacturer must provide a layout of the system set-up for testing (including a piping diagram, a power wiring diagram, a control wiring diagram, and identification of the location of the component(s) corresponding to each critical parameter to be controlled), setup instructions for indoor units and outdoor units, and charging instructions consistent with the installation manual. Also, the manufacturer must certify for which, if any, specific components (as listed in paragraph (a)(4)(i) of this section) the following provisions are applicable:

(1) The indoor unit model(s) in a tested combination within a basic model include both individual indoor unit models distributed in commerce with the specific component and individual indoor unit models distributed in commerce without the specific component;

(2) At least one of the individual indoor unit models distributed in commerce without the specific component is otherwise identical to any given individual indoor unit model distributed in commerce with the specific component; and

(3) Represented values for the tested combination are based on performance of individual indoor unit models distributed in commerce without the specific component.

(viii) Variable refrigerant flow multi-split heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h):

(A) When certifying compliance with an EER standard: The nominal cooling capacity in British thermal units per hour (Btu/h); rated heating capacity in British thermal units per hour (Btu/h); outdoor unit(s) and indoor units identified in the tested combination; components needed for heat recovery, if applicable; rated airflow in standard cubic feet per minute (scfm) for each indoor unit; water flow rate in gallons



per minute (gpm) for water-cooled units only; rated static pressure in inches of water; compressor frequency set points; required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model. Additionally, upon DOE request, the manufacturer must provide a layout of the system set-up for testing including charging instructions consistent with the installation manual.

(B) When certifying compliance with an IEER standard (for requirements in this list pertaining to or affected by indoor units, the requirements must be certified for each tested combination as required under paragraph (a)(3)(iv)(B) of this section): The nominal cooling capacity in British thermal units per hour (Btu/h) for each indoor and outdoor unit; the nominal heating capacity (Btu/h) for each indoor and outdoor unit; components needed for heat recovery, if applicable; identification of the indoor units to be thermally active for each IEER test point; the rated indoor airflow for the full-load cooling, full-load heating, and all part-load cooling tests (for each indoor unit) in standard cubic feet per minute (scfm); the indoor airflow-control setting to be used in the full-load cooling test (for each indoor unit); the airflow-control setting to be used in the full-load heating test (for each indoor unit); for water-cooled units—the rated water flow rate in gallons per minute (gpm); system start-up or initialization procedures, including conditions and duration; compressor break-in period duration; the frequency of oil-recovery cycles; operational settings for all critical parameters to be controlled at each of the four IEER cooling test conditions; operational settings for all critical parameters to be controlled for the heating test; required dip switch/control settings; identification of any system control device required for testing; a hierarchy of instructions for adjustment of critical parameters to reduce cooling capacity during IEER cooling tests (to be used if,

using initial critical parameter settings, the measured cooling capacity is more than 3 percent above the target cooling capacity); any additional testing instructions if applicable; and if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating. Instructions for conducting a controls verification procedure (as described in Appendix C of AHRI 1230–2021) at each of the four IEER cooling test conditions must also be provided, including the required thermostat setpoints to ensure control for 80 °F dry-bulb temperature when accounting for set point bias, the starting indoor dry-bulb temperature, and the indoor dry-bulb temperature ramp rate (R2). Additionally, the manufacturer must provide a layout of the system set-up for testing (including a piping diagram, a power wiring diagram, a control wiring diagram, and identification of the location of the component(s) corresponding to each critical parameter to be adjusted), setup instructions for indoor units and outdoor units, and charging instructions consistent with the installation manual. Also, the manufacturer must certify for which, if any, specific components (as listed in paragraph (a)(4)(i) of this section) the following provisions are applicable:

(1) The indoor unit model(s) in a tested combination within a basic model include both individual indoor unit models distributed in commerce with the specific component and individual indoor unit models distributed in commerce without the specific component;

(2) At least one of the individual indoor unit models distributed in commerce without the specific component is otherwise identical to any given individual indoor unit model distributed in commerce with the specific component; and

(3) Represented values for the tested combination are based on performance of individual indoor unit models distributed in commerce without the specific component.

(4) For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h), if a manufacturer has knowledge that any of its certified operational settings for

critical parameters to be controlled during IEER tests (per paragraphs (b)(4)(vii)(B) or (b)(4)(viii)(B) of this section) are invalid according to the results of a controls verification procedure appropriately conducted according to § 429.134(s)(3), then the manufacturer must re-certify valid operational settings for critical parameters for all affected basic models, and re-rate and re-certify all affected basic models.

\* \* \* \* \*

■ 4. Amend § 429.70 by revising paragraph (c)(2)(i) to read as follows:

**§ 429.70 Alternative methods for determining energy efficiency and energy use.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) The manufacturer must select at least the minimum number of basic models for each validation class specified in paragraph (c)(2)(iv) of this section to which the particular AEDM applies. Using the AEDM, calculate the energy use or efficiency for each of the selected basic models.

(A) Except for variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h) when certifying to standards in terms of IEER, test a single unit of each selected basic model in accordance with paragraph (c)(2)(iii) of this section. Compare the results from the single unit test and the AEDM energy use or efficiency output according to paragraph (c)(2)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and reliability of the AEDM.

(B) For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h) when certifying to standards in terms of IEER, the following provisions apply.

(1) If a manufacturer makes representations for a single type of indoor unit combination (*i.e.*, only ducted, non-ducted, or SDHV indoor unit combinations) across all the basic models for which an AEDM applies, the manufacturer must test at least a single tested combination of that type of indoor unit combination for each selected basic model in accordance with paragraph (c)(2)(iii) of this section.

(2) If a manufacturer makes representations for two types of indoor unit combinations (*i.e.*, ducted, non-ducted, and/or SDHV) within or across all the basic models for which the AEDM applies, the manufacturer must test at least a single tested combination

of a selected basic model as the first of those two types of indoor unit combination, and at least a single tested combination of a different selected basic model as the second of those two types of indoor unit combination, each in accordance with paragraph (c)(2)(iii) of this section.

(3) If a manufacturer makes representations for all three types of indoor unit combinations (i.e., ducted, non-ducted, and SDHV) within or across basic models for which the AEDM applies, the manufacturer must test at least a single tested combination of a selected basic model as a non-ducted tested combination and a single tested combination of a different selected basic model as a ducted tested combination, each in accordance with paragraph (c)(2)(iii) of this section.

(4) In all cases, compare the results from each tested basic model and the AEDM energy use or efficiency output according to paragraph (c)(2)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and reliability of the AEDM.

\* \* \* \* \*

■ 5. Section 429.104 is revised to read as follows:

§ 429.104 Assessment testing.

(a) DOE may, at any time, test a basic model to assess whether the basic model is in compliance with the applicable energy conservation standard(s).

(b) For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h) DOE may require that the manufacturer of a basic model ship or cause to be shipped from a retailer or distributor at its expense the means of control associated with the basic model, if applicable.

■ 6. Amend § 429.110 by:

- a. Redesignating paragraphs (a)(2) and (3) as paragraphs (a)(3) and (4), respectively;
- b. Adding new paragraph (a)(2);
- c. Revising paragraph (b)(1)(iv);
- d. Revising paragraph (e)(2);
- e. Redesignating paragraphs (e)(3) through (9) as (e)(4) through (10), respectively;
- f. Adding new paragraph (e)(3);
- g. In newly designated paragraph (e)(4), remove the words “(e)(1) or (2) of this section” and add in its place the words, “(e)(1), (2) or (3) of this section”;
- h. In newly designated paragraph (e)(8), remove the words “(e)(1) through (6)” and add in its place the words “(e)(1) through (7)”; and
- i. In newly designated paragraph (e)(9), remove the words “paragraph (e)(7)” and “paragraphs (e)(1) through (6)” and add in their place the words

“paragraph (e)(8)” and “paragraphs (e)(1) through (7)”, respectively;

The additions and revisions read as follows.

§ 429.110 Enforcement testing.

(a) \* \* \*

(2) For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 Btu/h) determining compliance with an energy conservation standard based on IEER, DOE may test for enforcement if DOE has reason to believe that a basic model is not in compliance, has invalid certified operational settings for critical parameter values, or has an otherwise invalid certified rating.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) DOE may require in the test notice that the manufacturer of a basic model ship or cause to be shipped from a retailer or distributor at its expense the requested number of units of a basic model specified in such test notice to the testing laboratory specified in the test notice. The manufacturer shall ship the specified initial test unit(s) of the basic model and to the testing laboratory within 5 working days from the time unit(s) are selected. For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h) the manufacturer shall also ship any means of control necessary for conducting testing in accordance with appendix D1 to part 431 of this subchapter. The manufacturer shall ship the means of control, if applicable, with the system(s) selected for testing.

\* \* \* \* \*

(e) \* \* \*

(2) For automatic commercial ice makers; commercial refrigerators, freezers, and refrigerator-freezers; refrigerated bottled or canned vending machines; commercial air conditioners and heat pumps except variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h); commercial packaged boilers; commercial warm air furnaces; commercial water heating equipment; and walk-in cooler and walk-in freezer refrigeration systems, DOE will use an initial sample size of not more than four units and follow the sampling plans in appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products).

(3) For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h).

(i) For determining compliance with an energy conservation standard based on EER, DOE will use an initial sample size of not more than four units and follow the sampling plans in appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products).

(ii) For determining compliance with an energy conservation standard based on IEER, DOE will use an initial sample size of two units and follow the sampling plans in appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products).

\* \* \* \* \*

■ 7. Amend § 429.134 by adding paragraph (s) to read as follows:

§ 429.134 Product-specific enforcement provisions.

\* \* \* \* \*

(s) Variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h). The following provisions apply for assessment and enforcement testing of models subject to standards in terms of IEER:

(1) Specific Components. If the indoor unit model(s) in a tested combination within a basic model include individual indoor unit models distributed in commerce with any of the specific components listed at § 429.43(a)(4)(i), the following provisions apply. For the purposes of this paragraph, “otherwise identical” means differing only in the presence of specific components listed at § 429.43(a)(4)(i).

(i) If the manufacturer does not certify in accordance with § 429.43(b)(4) that—

(A) Indoor unit model(s) in a tested combination within a basic model include both individual indoor unit models distributed in commerce with a specific component and otherwise identical individual indoor unit models distributed in commerce without the specific component, and

(B) Represented values for the tested combination are based on performance of individual indoor unit models distributed in commerce without the specific component, DOE may test the tested combination with individual indoor unit models with the component present (and consistent with any component-specific test provisions specified in section 6 of appendix D1 to subpart F of part 431).

(ii) If the manufacturer certifies in accordance with § 429.43(b)(4) that—

(A) Indoor unit model(s) in a tested combination within a basic model include both individual indoor unit models distributed in commerce with a specific component and otherwise identical individual indoor unit models distributed in commerce without the specific component, and

(B) Represented values for the tested combination are based on performance of individual indoor unit models distributed in commerce without the specific component, DOE will test the tested combination with otherwise identical indoor unit model(s) within the tested combination within a basic model that do not include the component, except in either of the following situations. In either of the following situations, DOE may test the tested combination with individual indoor unit models with the specific component present (and consistent with any component-specific test provisions specified in section 6 of appendix D1 to subpart F of part 431).

(1) DOE is not able, through documented reasonable effort, to obtain individual indoor unit models for testing that do not include the component.

(2) DOE becomes aware that the manufacturer's certification in accordance with § 429.43(b)(4) regarding specific components is invalid.

(2) *Manufacturer involvement in assessment or enforcement testing.* A manufacturer's representative will be allowed to support commissioning and witness assessment and/or enforcement testing for variable refrigerant flow multi-split air conditioners and heat pumps, including during the controls verification procedures (CVPs), specified in paragraph (s)(3) of this section, with allowance for additional involvement as described in the following provisions.

(i) *Manufacturer involvement in CVP—Control settings* must be set by a member of the third-party laboratory and per the provisions in section 5.1 of appendix D1 to subpart F of part 431. Critical parameters must operate automatically from the system controls and must not be manually controlled or adjusted at any point during the CVP. The manufacturer's representative must not make any adjustments to the VRF multi-split system for a CVP.

(ii) *Manufacturer involvement in heating tests and IEER cooling tests—All control settings other than critical parameters* must be set by a member of the third-party laboratory, following the provisions of section 5.1 of appendix D1 to subpart F of part 431. Critical

parameters may be manually controlled by a manufacturer's representative, including initial setting to the certified values and additional adjustments (as described in sections 5.1 and 5.2 of appendix D1 to subpart F of part 431, respectively). Setting and adjustment of critical parameters by a manufacturer's representative must be monitored by third-party laboratory personnel using a service tool. The manufacturer's representative must not make any other adjustments to the VRF multi-split system under test. If a manufacturer's representative is not present for testing, a member of the third-party laboratory must set and adjust critical parameters using the provided means of control described in § 429.110(b)(1)(iv) for enforcement testing and § 429.104 for assessment testing.

(3) *Controls Verification Procedure (CVP).* This procedure validates the certified values of critical parameters for which positions may be manually set during the full- and part-load IEER cooling test conditions specified at appendix D1 to subpart F of part 431. The CVP will only be conducted for a single system.

(i) *Conducting the CVP—The CVP* will be conducted at all of the four IEER cooling test conditions as specified in appendix D1 to subpart F of part 431; the CVP is not applicable for any heating test conditions. The CVP will first be performed at the full-load cooling condition before being conducted at part-load cooling conditions and must be conducted per Appendix C of AHRI 1230–2021 (incorporated by reference, see § 429.4).

(ii) *Validating Critical Parameters—At each load point, certified critical parameter values* will be validated or invalidated according to Section C6 of AHRI 1230–2021 with the following amendments:

(A) The duration of the period used for validating certified critical parameter values must be whichever of the following is longer: Three minutes, or the time period needed to obtain five sample readings while meeting the minimum data collection interval requirements of Table C2 of AHRI 1230–2021.

(B) If at least one measurement period with duration identified in paragraph (s)(3)(ii)(A) of this section exists before  $t_{\text{OFF}}$  that has an average root-sum-square (“RSS”) points total (as defined in Section 3.26 of AHRI 1230–2021) over the measurement period that is less than or equal to 70 points, the certified critical parameter values are valid.

(C) If no measurement period with duration identified in paragraph (s)(3)(ii)(A) of this section exists before

$t_{\text{OFF}}$  that has an average RSS points total over the measurement period that is less than or equal to 70 points, the certified critical parameter values are invalid.

(iii) *Determining critical parameters for use in steady-state IEER cooling tests—If, following a CVP, IEER testing* is conducted per appendix D1 to subpart F of part 431, the following provisions apply:

(A) *Validated critical parameter settings.* At each load point, if certified critical parameter values are found to be valid according to the results of the CVP, initially set critical parameters to their certified values for the IEER test at the corresponding full- or part-load cooling condition. Perform additional adjustments to critical parameters as described in section 5.2 of appendix D1 to subpart F of part 431.

(B) *Invalidated critical parameter settings.* At each load point, if certified critical parameter values are found to be invalid according to the results of the CVP, determine alternate critical parameter values for use in the corresponding IEER test (as specified in appendix D1 to subpart F of part 431). Determine alternate critical parameter values from the CVP results of the single system described in paragraph (s)(3) of this section as follows:

(1) Select the CVP measurement period—this period must have duration determined per paragraph (s)(3)(ii)(A) of this section and must be the period where the RSS points total has a lower average value over the measurement period than over any other time period in the CVP of the same duration. If multiple periods exist with the same RSS points total, select the measurement period closest to but before the time that the first indoor unit switches to thermally inactive (denoted as “ $t_{\text{off}}$ ” in AHRI 1230–2021).

(2) Determine alternate critical parameters—calculate the average position for each critical parameter during the measurement period selected in paragraph (s)(3)(iii)(B)(1) of this section. When initially setting critical parameters per section 5.1 of appendix D1 to subpart F of part 431, instead of using the certified critical parameter values, use the alternate critical parameter values as control inputs. The same initial alternate critical parameter values must be used for all systems in the assessment/enforcement sample (though critical parameter adjustments as needed to achieve target capacity or sensible heat ratio (SHR) limits are made independently for each tested system, per paragraph (s)(3)(iii)(B)(3) of this section.

(3) For each system, determine whether critical parameter adjustments

are needed to achieve the target capacity or sensible heat ratio (SHR) limit for an IEER cooling test. Perform critical parameter adjustments independently on each system as described in section 5.2 of appendix D1 to subpart F of part 431, with the following exceptions:

(i) Replace all references to “certified critical parameter values” with “alternate critical parameter values” as determined in paragraph (s)(3)(iii)(B) of this section.

(ii) Determine  $CP_{Max}$  from a CVP conducted at full-load cooling conditions as the maximum value observed during the R2 period as described in Section C.4.4.2.3 of AHRI 1230–2021. If multiple components corresponding to a single parameter are present, determine  $CP_{Max}$  at the point during the R2 period at which the average value across all components corresponding to that critical parameter is maximized.

**PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT**

■ 8. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C 6291–6317; 28 U.S.C 2461 note.

■ 9. Section 431.92 is amended by revising the definition of “Integrated energy efficiency ratio, or IEER” to read as follows:

**§ 431.92 Definitions concerning commercial air conditioners and heat pumps.**

\* \* \* \* \*

*Integrated energy efficiency ratio, or IEER*, means a weighted average calculation of mechanical cooling EERs determined for four load levels and corresponding rating conditions, expressed in Btu/watt-hour. IEER is measured per appendix A of this subpart for air-cooled small ( $\geq 65,000$  Btu/h), large, and very large commercial package air conditioning and heating equipment and measured per appendix

D1 of this subpart for variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 Btu/h).

\* \* \* \* \*

- 10. Amend § 431.95 by:
  - a. Revising paragraph (a);
  - b. Revising paragraph (b)(6);
  - c. Adding paragraph (b)(7); and
  - d. Revising paragraph (c)(2).

The revisions and addition read as follows:

**§ 431.95 Materials incorporated by reference.**

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, DOE must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L’Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov*, <https://www.energy.gov/eere/buildings/building-technologies-office>, and may be obtained from the other sources in this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov*, or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

(b) \* \* \*

(6) ANSI/AHRI Standard 1230–2010, “2010 Standard for *Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment*,” approved August 2, 2010 and updated by addendum 1 in March 2011 (AHRI 1230–2010), IBR approved for § 431.96 and appendix D of this subpart.

(7) AHRI Standard 1230–2021, “Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment”, published in 2021 (AHRI 1230–2021), IBR approved for appendix D1 of this subpart.

(c) \* \* \*

(2) ANSI/ASHRAE Standard 37–2009, (“ANSI/ASHRAE 37–2009”), “Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment”, (including Errata Sheet issued October 3, 2016), ASHRAE approved June 24, 2009, IBR approved for § 431.96 and appendices A and D1 of this subpart.

\* \* \* \* \*

- 11. Amend § 431.96 by:
  - a. Revising paragraph (b)(1);
  - b. Redesignating table 1 to paragraph (b)(2) as table 1 to § 431.96; and
  - c. Revising newly redesignated table 1 to § 431.96.

The revisions read as follows:

**§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.**

\* \* \* \* \*

(b) *Testing and calculations.* (1) Determine the energy efficiency of each type of covered equipment by conducting the test procedure(s) listed in table 1 to this section along with any additional testing provisions set forth in paragraphs (c) through (g) of this section and appendices A through D1 of this subpart, that apply to the energy efficiency descriptor for that equipment, category, and cooling capacity. The omitted sections of the test procedures listed in table 1 to this section must not be used. For equipment with multiple appendices listed in table 1 to this section, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

(2) \* \* \*

TABLE 1 TO § 431.96—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions, and procedures <sup>1</sup> in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h .....	SEER and HSPF ...	AHRI 210/240–2008 (omit section 6.5).	None.
	Air-Cooled AC and HP.	$\geq 65,000$ Btu/h and <135,000 Btu/h.	EER, IEER, and COP.	Appendix A of this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h .....	EER .....	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).

TABLE 1 TO § 431.96—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions, and procedures <sup>1</sup> in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Large Commercial Package Air-Conditioning and Heating Equipment.	Water-Source HP ....	≥65,000 Btu/h and <135,000 Btu/h.	EER .....	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Air-Cooled AC and HP.	<135,000 Btu/h .....	EER and COP .....	ISO Standard 13256–1 (1998). Appendix A to this subpart.	Paragraph (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER .....	AHRI 340/360–2007 (omit section 6.3).	None.
	Air-Cooled AC and HP.	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP.	Appendix A to this subpart.	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER .....	AHRI 340/360–2007 (omit section 6.3).	None.
	AC and HP .....	<760,000 Btu/h .....	EER and COP .....	Appendix A to this subpart.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC .....	<65,000 Btu/h .....	SCOP .....	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
Variable Refrigerant Flow Multi-split Systems.	AC .....	≥65,000 Btu/h and <760,000 Btu/h.	SCOP .....	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
	AC .....	<65,000 Btu/h (3-phase).	SEER .....	ANSI/AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP .....	<65,000 Btu/h (3-phase).	SEER and HSPF ....	ANSI/AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	AC and HP .....	≥65,000 Btu/h and <760,000 Btu/h.	EER and COP .....	Appendix D of this subpart <sup>2</sup> .	None.
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP .....	≥65,000 Btu/h and <760,000 Btu/h.	IEER and COP .....	Appendix D1 of this subpart <sup>2</sup> .	None.
	HP .....	<760,000 Btu/h .....	EER and COP .....	Appendix D of this subpart <sup>2</sup> .	None.
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	HP .....	<760,000 Btu/h .....	IEER and COP .....	Appendix D1 of this subpart <sup>2</sup> .	None.
	AC and HP .....	<760,000 Btu/h .....	EER and COP .....	AHRI 390–2003 (omit section 6.4).	Paragraphs (c) and (e).

<sup>1</sup> Incorporated by reference; see § 431.95.

<sup>2</sup> For equipment with multiple appendices listed in this table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

\* \* \* \* \*

**Appendix B to Subpart F of Part 431 [Reserved]**

■ 12. Add and reserve appendix B to subpart F of part 431.

**Appendix C to Subpart F of Part 431 [Reserved]**

■ 13. Add and reserve appendix C to subpart F of part 431.

■ 14. Add appendix D to subpart F of part 431 to read as follows:

**Appendix D to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps (Other Than Air-Cooled With Rated Cooling Capacity Less Than 65,000 BTU/H)**

**Note:** Manufacturers must use the results of testing under this appendix to determine

compliance with the relevant standard from § 431.97 as that standard appeared in the January 1, 2021 edition of 10 CFR parts 200–499. Specifically, before [Date 360 days after publication of the final rule in the **Federal Register**] representations must be based upon results generated either under this appendix or under 10 CFR 431.96 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021.

For any amended standards for variable refrigerant flow multi-split air conditioners and heat pumps that rely on integrated

energy efficiency ratio (IEER) published after January 1, 2021, manufacturers must use the results of testing under appendix D1 of this subpart to determine compliance. Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.*, appendix D or appendix D1) when determining compliance with the relevant standard.

1. *Incorporation by Reference.*

DOE incorporated by reference in § 431.95, the entire standard for ANSI/AHRI 1230–2010. However, only enumerated provisions of that document apply to this appendix, as set forth in paragraph (1) of this section. To the extent there is a conflict, the language of the test procedure in this appendix takes precedence over the referenced test standard.

(1) ANSI/AHRI 1230–2010:

(i) Section 5.1.2—Manufacturer involvement is inapplicable as specified in section 2.1 of this appendix.

(ii) Section 6.6—Verification testing and uncertainty is inapplicable as specified in section 2.2 of this appendix.

2. *General.* Determine the energy efficiency ratio (EER) and coefficient of performance (COP) (as applicable) in accordance with ANSI/AHRI 1230–2010; however, the following enumerated provisions of that document are not applicable.

(i) Section 5.1.2—Manufacturer involvement

(ii) Section 6.6—Verification testing uncertainty

Sections 3 through 6 of this appendix provide additional instructions for determining EER and COP.

3. *Optional break-in period.* Manufacturers may optionally specify a “break-in” period, not to exceed 20 hours, to operate the equipment under test prior to conducting the test method specified in this appendix. A manufacturer who elects to use an optional compressor break-in period in its certification testing should record this period’s duration as part of the information in the supplemental testing instructions under 10 CFR 429.43.

4. *Refrigerant line length corrections.* For test setups where it is physically impossible for the laboratory to use the required line length listed in Table 3 of the ANSI/AHRI 1230–2010, then the actual refrigerant line length used by the laboratory may exceed the required length and the following cooling capacity correction factors are applied:

Piping length beyond minimum, X (ft)	Piping length beyond minimum, Y (m)	Cooling capacity correction (%)
0 > X ≤ 20	0 > Y ≤ 6.1	1
20 > X ≤ 40	6.1 > Y ≤ 12.2	2
40 > X ≤ 60	12.2 > Y ≤ 18.3	3
60 > X ≤ 80	18.3 > Y ≤ 24.4	4
80 > X ≤ 100	24.4 > Y ≤ 30.5	5
100 > X ≤ 120	30.5 > Y ≤ 36.6	6

5. *Additional provisions for equipment set-up.* The only additional specifications that may be used in setting up the basic model for test are those set forth in the installation and operation manual shipped with the unit. Each unit should be set up for test in accordance with the manufacturer installation and operation manuals. Sections 5.1 through 5.3 of this appendix provide specifications for addressing key information typically found in the installation and operation manuals.

5.1. If a manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressure in its installation and operation manual for a given basic model, any value(s) within that range may be used to determine refrigerant charge or mass of refrigerant, unless the manufacturer clearly specifies a rating value in its installation and operation manual, in which case the specified rating value must be used.

5.2. The airflow rate used for testing must be that set forth in the installation and operation manuals being shipped to the commercial customer with the basic model and clearly identified as that used to generate the DOE performance ratings. If a rated airflow value for testing is not clearly identified, a value of 400 standard cubic feet per minute (scfm) per ton must be used.

5.3. The test set-up and the fixed compressor speeds (*i.e.*, the maximum, minimum, and any intermediate speeds used for testing) should be recorded and maintained as part of the test data underlying the certified ratings that is required to be maintained under 10 CFR 429.71.

6. *Manufacturer involvement in assessment or enforcement testing.* A manufacturer’s representative will be allowed to witness assessment and/or enforcement testing for variable refrigerant flow multi-split air

conditioners and heat pumps. The manufacturer’s representative will be allowed to inspect and discuss set-up only with a DOE representative. During testing, the manufacturer’s representative may adjust only the modulating components that are necessary to achieve steady-state operation in the presence of a DOE representative. Only previously documented specifications for set-up as specified under sections 4 and 5 of this appendix will be used.

■ 15. Add appendix D1 to subpart F of part 431 to read as follows:

**Appendix D1 to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps (Other Than Air-Cooled With Rated Cooling Capacity Less Than 65,000 BTU/H)**

**Note:** Manufacturers must use the results of testing under this appendix to determine compliance with any amended standards for variable refrigerant flow multi-split air conditioners and heat pumps provided in § 431.97 that are published after January 1, 2021, and that rely on integrated energy efficiency ratio (IEER). Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.*, appendix D or appendix D1) when determining compliance with the relevant standard.

1. *Incorporation by Reference.*

DOE incorporated by reference in § 431.95, the entire standard for AHRI Standard 1230–2021, and ANSI/ASHRAE Standard 37–2009. However, only enumerated provisions of these documents apply to this appendix, as set forth in paragraphs (1) and (2) of this

section. To the extent there is a conflict, the language of the test procedure in this appendix takes precedence over the referenced test standards.

(1) AHRI 1230–2021:

(i) Section 3—Definitions, except section 3.10, is applicable as specified in section 2.1.1 of this appendix.

(ii) Section 5—Test Requirements, except section 5.1.2, is applicable as specified in section 2.1.2 of this appendix.

(iii) Section 6—Rating Requirements, except sections 6.3.3 and 6.5, is applicable as specified in section 2.1.3 of this appendix.

(iv) Section 11—Calculations is applicable as specified in section 2.1.4 of this appendix.

(v) Section 12—Symbols, Subscripts and Superscripts is applicable as specified in section 2.1.5 of this appendix.

(vi) Appendix E—ANSI/ASHRAE Standard 37–2009 Clarifications/Exceptions—Normative is applicable as specified in section 2.1.6 of this appendix.

(2) ANSI/ASHRAE 37–2009 (including Errata Sheet issued October 3, 2016):

(i) Section 1—Purpose is inapplicable as specified in section 2.2.1 of this appendix.

(ii) Section 2—Scope is inapplicable as specified in section 2.2.2 of this appendix, and

(iii) Section 4—Classification is inapplicable as specified in section 2.2.3 of this appendix.

(2) *General.* Determine IEER and coefficient of performance (COP) (as applicable) in accordance with AHRI 1230–2021 and ANSI/ASHRAE 37–2009 (including Errata Sheet issued on October 3, 2016; however, only the following enumerated provisions of those documents apply.

2.1. *Applicable Sections of AHRI 1230–2021*

2.1.1. Section 3—Definitions (Except Section 3.10—Definition of *Critical Parameter(s)*),

2.1.2. Section 5—Test Requirements (Except Sections 5.1.2.1, 5.1.2.2, and 5.1.2.3—Control Settings),

2.1.3. Section 6—Rating Requirements (Except Section 6.3.3—Allowable Critical Parameter Adjustments and Section 6.5—Simultaneous Cooling and Heating Efficiency and Capacity Ratings),

2.1.4. Section 11—Calculations,

2.1.5. Section 12—Symbols, Subscripts and Superscripts,

2.1.6. Appendix E—ANSI/ASHRAE 37–2009 Clarifications/Exceptions—Normative

*Note:* The controls verification procedure specified in Appendix C of AHRI 1230–2021 is referenced as part of DOE's certification provisions at § 429.43(b) and product-specific enforcement provisions located at § 429.134(s)(3).

2.2. Excepted sections of ANSI/ASHRAE 37–2009 (including Errata Sheet issued October 3, 2016)

2.2.1. Section 1—Purpose

2.2.2. Section 2—Scope

2.2.3. Section 4—Classifications

Sections 3 through 5 of this appendix provide additional instructions for determining IEER and COP. In cases where there is a conflict, the language of this appendix takes highest precedence, followed by AHRI 1230–2021, followed by ANSI/ASHRAE 37–2009 (including Errata Sheet issued October 3, 2016).

### 3. Definitions

3.1. *Critical Parameter(s)* are the following settings of modulating components of variable refrigerant flow multi-split air conditioners and heat pumps: compressor speed(s), outdoor fan speed(s) and outdoor variable valve position(s).

#### 4. Test Conditions

4.1. *Test Conditions for air-cooled VRF multi-split systems with rated cooling capacity greater than 65,000 Btu/h.* When testing to certify to the energy conservation standards in § 431.97, test using the “Standard Rating Conditions, Cooling” and “Standard Rating Part-Load Conditions (IEER)” conditions for cooling mode tests and “Standard Rating Conditions (High Temperature Steady-state Test for Heating)” conditions for heat pump heating mode tests, as specified in Table 9 of AHRI 1230–2021.

4.1.1. Representations of COP for air-cooled VRF multi-split systems with rated cooling capacity greater than 65,000 Btu/h made using the “Low Temperature Operation, Heating” condition specified in Table 9 of AHRI 1230–2021 are optional.

4.2. *Test Conditions for water-source VRF multi-split systems.* When testing to certify to the energy conservation standards in

§ 431.97, test using the “Part-load Conditions (IEER)” conditions specified for “Water Loop Heat Pumps” in Table 10 of AHRI 1230–2021 for cooling mode tests and the “Standard Rating Test” conditions specified for “Water Loop Heat Pumps” in Table 11 of AHRI 1230–2021 for heat pump heating mode tests.

4.2.1. For water-source VRF multi-split systems, representations of EER made using the “Standard Rating Test” conditions specified for “Ground-loop Heat pumps” in Table 10 of AHRI 1230–2021 and representations of COP made using the “Standard Rating Test” conditions specified for “Ground-loop Heat Pumps” in Table 11 of AHRI 1230–2021 are optional.

#### 5. Test Procedure

5.1. *Control Settings.* Control settings must be set in accordance with sections 5.1.3, 5.1.4, 5.1.5, and 5.2 of AHRI 1230–2021. For units equipped with head pressure controls, the head pressure controls must be set per manufacturer installation instructions or per factory settings if no instructions are provided. Indoor airflow-control settings must be set in accordance with Section 6.3.1 of AHRI 1230–2021. At each load point, critical parameters must be set to the values certified in the STI. In cases where a certified critical parameter value is not in the STI, the system must operate per commands from the system controls for that parameter. Once set, control settings must remain unchanged for the remainder of the test (except for allowable adjustment of critical parameters as described in section 5.2 of this appendix).

5.2. *Allowable Critical Parameter Adjustments for IEER cooling tests.* The following sections describe allowable adjustments to critical parameters after the initial system setup (during which all control settings, including certified critical parameters, are set). Adjust critical parameters in order to achieve full- and part-load cooling capacity targets and SHR limits.

5.2.1. *Critical Parameter Adjustments for Meeting Cooling Capacity Targets.* Once critical parameters have been set to the values certified in the STI, if the unit cannot operate within 3% of the target cooling capacity (*i.e.*, within 3% of the load fraction for a given part-load cooling test (75%, 50%, or 25% load) or within 3% of the certified cooling capacity for a 100% full-load cooling test), manually-controlled critical parameters must be adjusted according to the following provisions:

5.2.1.1. *Cooling Capacity is Below Lower Tolerance.* If, for any test, the cooling capacity operates below the lower tolerance for the target cooling capacity, increase the compressor speed(s) beyond the STI-certified value(s) until the cooling capacity operates within 3% of the target cooling capacity. If multiple compressors are present in the

system, increase compressor speed by the same absolute increment in RPM or Hz for each compressor for which the following conditions apply:

(1) The STI specifies a non-zero compressor speed for the compressor for that test and

(2) The compressor has not yet reached its maximum capable operating speed. The compressor speed(s) must not be less than the STI-certified value(s) at any point during the test. Upward adjustments to compressor speed are not constrained by a budget on RSS Points Total (See section 5.2.1.2.1 of this appendix).

5.2.1.2. *Cooling Capacity is Above Upper Tolerance.* If, for any test, the cooling capacity operates above the upper tolerance for the target cooling capacity, adjust any manually-controlled critical parameters per the STI. If the STI does not include a hierarchy of instructions for adjustment of critical parameters to reduce cooling capacity during IEER cooling tests, then reduce only the compressor speed(s) to reduce cooling capacity. If multiple compressors are present in the system, decrease compressor speed by the same absolute increment for each compressor for which the following conditions apply:

(1) The STI specifies a non-zero compressor speed for the compressor for that test and

(2) The compressor has not yet reached minimum speed. Continue reducing cooling capacity in this manner until one of the following occurs:

(i) The unit operates within 3% of the target cooling capacity; or

(ii) The RSS point total reaches a budget of 70 points (See section 5.2.1.2.1 of this appendix). For the 75%, 50% and 25% part-load cooling test points, if the RSS point total reaches 70 during critical parameter adjustments before the capacity operates within 3% of the target cooling capacity, stop adjustment and follow cyclic degradation procedures in accordance with Section 11.2.2.1 of AHRI 1230–2021.

5.2.1.2.1. *Measuring Critical Parameter Variation During Adjustment Period.* When adjusting critical parameters to reduce cooling capacity, critical parameter variation must be calculated each time the critical parameters are adjusted, using the following equations:

First, use equation 5.2–1 to calculate the absolute parameter percent difference (*PPD*) between each adjusted critical parameter and the value for that parameter certified in the supplemental testing instructions provided by the manufacturer pursuant to § 429.43(b)(4) of this chapter (STI).

$$\text{Equation 5.2-1} \quad PPD_i = \left| \frac{CP_{i,Adj} - CP_{i,STI}}{CP_{Max}} \right| \times 100$$

Where:

“i” identifies the critical parameter—either compressors speed(s), outdoor fan

speed(s), or outdoor variable valve position(s)

$CP_{i,Adj}$  = The adjusted position of critical parameter “i”, recorded at each measurement interval. If multiple

components corresponding to a single parameter are present (*e.g.*, multiple compressors), calculate the average position across all components corresponding to that parameter at each

measurement interval when determining  $CP_{i,adj}$ .  
 $CP_{i,STI}$  = The position of critical parameter “i” as certified in the STI. If multiple components corresponding to a single parameter are present, calculate the average position across all components

corresponding to that parameter at each measurement interval when determining  $CP_{i,STI}$ .  
 $CP_{Max}$  = The maximum operating position for Critical Parameter “i”, as certified in the STI for the 100% load condition. If multiple components corresponding to a

single parameter are present, calculate as the average value across all components corresponding to that critical parameter certified in the STI for the 100% load condition.

Next, use equation 5.2–2 to determine the accrued points for each critical parameter:

$$\text{Equation 5.2-2} \quad Points_i = PPD_i \times NPV_i$$

Where:

“i” identifies the critical parameter—either compressors speed(s), outdoor fan speed(s), or outdoor variable valve position(s)

$NPV_i$  = the nominal point value for critical parameter “i”, as follows:

TABLE 5.1—CRITICAL PARAMETER NOMINAL POINT VALUES

Critical parameter	Nominal point value
Compressor Speed(s) .....	13
Outdoor Fan Speed(s) .....	7
Outdoor Variable Valve position(s) .....	1

Finally, use equation 5.2–3 to calculate the root-sum-squared (RSS) Points Total across all critical parameters.

$$\text{Equation 5.2-3}$$

$$RSS\ Points = \sqrt{(Points_{Compressors})^2 + (Points_{Fans})^2 + (Points_{Valves})^2}$$

5.2.2 *Critical Parameter Adjustments for Meeting SHR Limits.* The SHR for the 100% load test point and the 75% part-load test point must not be higher than 0.82 and 0.85, respectively (measured to the nearest hundredth). If the SHR is above the allowable limit, increase the compressor speed(s) until either the SHR is less than or equal to the allowable limit or the cooling capacity reaches 3% greater than the target cooling capacity for that test, whichever happens first. If multiple compressors are present in

the system, increase compressor speed by the same absolute increment for each compressor for which the following conditions apply:

- (1) The STI specifies a non-zero compressor speed for the compressor for that test and
- (2) The compressor has not yet reached maximum speed. Upwards adjustments to compressor speed are not constrained by a budget on RSS Points Total. Should the SHR remain above the maximum limit when the cooling capacity reaches its upper 3%

tolerance, no further compressor adjustments must be made, and the calculation procedures specified in Section 11.2.2.2 of AHRI 1230–2021 must be applied using the adjusted SHR value obtained after increasing the compressor speed(s).

6. *Set-Up and Test Provisions for Specific Components.* When testing a VRF multi-split system that includes any of the specific components listed in Table 6.1, test in accordance with the set-up and test provisions specified in Table 6.1.

TABLE 6.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS

Component	Description	Test provisions
Desiccant Dehumidification Components.	An assembly that reduces the moisture content of the supply air through moisture transfer with solid or liquid desiccants.	Disable desiccant dehumidification components for testing.
Air Economizers .....	An automatic system that enables a cooling system to supply outdoor air to reduce or eliminate the need for mechanical cooling during mid or cold weather.	For any air economizer that is factory-installed, place the economizer in the 100% return position and close and seal the outside air dampers for testing. For any modular air economizer shipped with the unit but not factory-installed, do not install the economizer for testing.
Fresh Air Dampers .....	An assembly with dampers and means to set the damper position in a closed and one open position to allow air to be drawn into the equipment when the indoor fan is operating.	For any fresh air dampers that are factory-installed, close and seal the dampers for testing. For any modular fresh air dampers shipped with the unit but not factory-installed, do not install the dampers for testing.
Hail Guards .....	A grille or similar structure mounted to the outside of the unit covering the outdoor coil to protect the coil from hail, flying debris and damage from large objects.	Remove hail guards for testing.
Low Ambient Cooling Dampers.	An assembly with dampers and means to set the dampers in a position to recirculate the warmer condenser discharge air to allow for reliable operation at low outdoor ambient conditions.	Remove low ambient cooling dampers for testing.
Power Correction Capacitors	A capacitor that increases the power factor measured at the line connection to the equipment. These devices are a requirement of the power distribution system supplying the unit.	Remove power correction capacitors for testing.



TABLE 6.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS—Continued

Component	Description	Test provisions
Ventilation Energy Recovery Systems (VERS).	An assembly that preconditions outdoor air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.	For any VERS that is factory-installed, place the VERS in the 100% return position and close and seal the outside air dampers and exhaust air dampers for testing, and do not energize any VERS subcomponents ( <i>e.g.</i> , energy recovery wheel motors). For any VERS module shipped with the unit but not factory-installed, do not install the VERS for testing.

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